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

*Reserved on: 23.12.2022
Pronounced on: 24.01.2023*

+ **W.P.(C) 16897/2022 & CM APPL. 53967/2022**

SONAM RAWAL

..... Petitioner

Through: Mr. Manoj Kumar Gaur, Adv.

versus

UNIVERSITY OF DELHI AND ORS

..... Respondents

Through: Mr. Mohinder JS Rupal, Adv. for
UoD.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The petitioner having graduated in B.Sc. (H) Biological Science from the University of Delhi applied for admission in M.Sc. Botany course under the Merit Admission Category as OBC (Non-Creamy Layer) candidate for the academic year 2022-2023 in the University of Delhi.

2. The grievance of the petitioner is that her candidature for admission in M.Sc. Botany under the Merit Admission Category has been ignored, inasmuch as, in the first admission list issued on 02.12.2022 by the respondent no.3, [Department of Botany, University of Delhi] her name does not figure amongst the candidates selected for admission despite the petitioner having scored 88.96% (9.365 CGPA) in B.Sc. (H) Biological Science, whereas the candidates selected for admission at serial number 5 to

12 in the list are having much lesser percentage, varying from 88.71% to 86.40%. The first admission list dated 02.12.2022 for M.Sc. Botany-2022 for OBC Non-Creamy Layer (Merit Based) [Annexure P/1, page 24] reads as under:-

University of Delhi

First Admission List - M.Sc. Botany-2022

14:03:24

University of Delhi

Admission Category: OBC Non-Creamy layer (Merit Based)

#	Form No.	Name	Allotted Department/College	Qualifying Marks %/GP	Choice	Category Filled by Candidate
1	22BOTA1068579	HIMANSHI	Miranda House	89.34	1	OBC Non-Creamy layer
2	22BOTA1101809	AKANKSHA KUSHWAHA	Hindu College	89.34	1	OBC Non-Creamy layer
3	22BOTA1168155	DEVIKA K V	Department of Botany	89.34	1	OBC Non-Creamy layer
4	22BOTA1037432	PRIYANKA MOIRANGTHEM	Miranda House	88.96	1	OBC Non-Creamy layer
5	22BOTA1088812	NEHA YADAV	Hans Raj College	88.71	3	OBC Non-Creamy layer
6	22BOTA1105753	MANSI	Kirori Mal College	88.71	4	OBC Non-Creamy layer
7	22BOTA1030463	GUNJAN VERMA	Department of Botany	88.19	1	OBC Non-Creamy layer
8	22BOTA1104405	PREETI GUPTA	Department of Botany	86.91	5	OBC Non-Creamy layer
9	22BOTA1100037	TOURANGBAM MRAKSHITA DEVI	Ramjas College	86.78	4	OBC Non-Creamy layer
10	22BOTA1108436	IQRA PARVEEN	Department of Botany	86.78	5	OBC Non-Creamy layer
11	22BOTA1195708	ANUJA	Department of Botany	86.40	1	OBC Non-Creamy layer
12	22BOTA1195875	MANGSIDAM TIQBIS/ANA DEVI	Department of Botany	86.40	6	OBC Non-Creamy layer

3. The petitioner's version is that on enquiry being made from the admission branch of the respondent no.1, she came to know that she is not eligible for merit or percentage-based admission in the M.Sc. Botany Course in terms of the prospectus released by the university, for the reason that she does not possess the eligibility qualification of B.Sc. (Hons.) Botany.

4. Intriguingly, it is petitioner's own case that the eligibility criteria for admission in Program 55: M.Sc. Botany (both merit and entrance based) [Annexure P/3, page 27], is a part of Bulletin of Information 2022. The said Bulletin provides B.Sc. (Hons.) Botany from University of Delhi as eligibility criteria for admission under the Merit Category. The eligibility criteria as provided in the said Bulletin reads as under:

Eligibility in Entrance Category		
Category Id	Course Requirements	Marks Requirements
1	B.Sc. (Hons.) Botany/B.Sc. (Hons.) Biological Sciences (3 Years Courses after 10+2) from University of Delhi or any other University whose examination is recognized as equivalent to University of Delhi fulfilling other conditions of eligibility.	55% or above marks in aggregate or equivalent grade
2	B.Sc. Program Life Science / B.Sc. (Genl. / Prog.) / B.Sc. (Pass) / B.Sc. Life Science (3 Years course after 10+2) from University of Delhi or any other University whose examination is recognized as equivalent to University of Delhi fulfilling other conditions of eligibility.	55% or above marks in aggregate or equivalent grade
Eligibility in Merit Category		
3	B.Sc. (Hons.) Botany from University of Delhi.	60% or above marks in aggregate or equivalent grade

5. The contention of the petitioner, however, is that she has been misled by the online application form for admission to M.Sc. Botany [Annexure P/4, page 28 at p.29] (hereinafter referred to as 'PG Admission Form') filled by her wherein for the Merit Based Category, the eligibility criteria also includes B.Sc. (Hons.) Biological Science. The same reads as under:-

For Merit Based

Category Code-3	B.Sc. (Hons.) Botany/B.Sc. (Hons.) Biological Sciences (3 Years Course after 10+2) from University of Delhi only.	60% or above marks in aggregate or equivalent grade.
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6. In view of the above criteria mentioned in the PG Admission Form, the petitioner urges that she is fulfilling all the requisite qualifications stipulated for admission to the M.Sc. Botany Course under the Merit Category and would have secured 4th rank in the merit list published for the OBC (NCL) Category [Annexure P/1] with her aggregate 88.96% marks in B.Sc (H) Biological Science.
7. In the above background, the petitioner filed the present petition with the following prayer:-

“a) Directing the respondents to place the relevant records pertaining to the present writ petition before their Lordships for the proper adjudication in the matter in the interest of justice.

b) Declaring the actions of the respondents wrongly ignoring the candidature of the petitioner for admissions in M.Sc. Botany 2022 in admission category: OBC Non-Creamy Layer (Merit Based) while issuing first admission list on dated 02.12.22 whereas the petitioner is having 88.96% (9.365 CGPA) in B.Sc. (H) Biological Science and the candidates selected for admission from serial no.5 to 12 are having much lesser percentage (88.71 to 86.40) than the petitioner; further

(c) Directing the respondents to add the name of the petitioner for admissions in M.Sc. Botany 2022 in admission category: OBC Non-Creamy Layer (Merit Based) as the petitioner is having 88.96% (9.365 CGPA) in B.Sc. (H) Biological Science with all other consequential benefits in accordance with the relevant rules and instructions on the subject.

(d) Allowing the present writ petition of the petitioner with admissible consequential benefits and cost.”

8. Subsequently, the petitioner sought to amend the writ petition to insert the following paragraph in the prayer clause of the writ petition:-

“(a)(i) Quash and setting aside the ‘Program 55: M.Sc. Botany’ (Annexure P/3) to the extent of prescribing Eligibility Criteria wherein for Entrance Category the requisite qualification is B.Sc. (Hons.) Botany/B.Sc. (Hons.) Biological Sciences (3 Years Courses after 10+2) from University of Delhi or any other University whose examination is recognised as equivalent to University of Delhi fulfilling other conditions of eligibility but at the same time for the merit category the requisite qualification is B.Sc. (Hons.) Botany from University of Delhi only after declaring the same is as illegal, irrational, unjust, arbitrary, malafide, unconstitutional, against the principles of natural justice, violative of articles 14, 16 & 21 of the constitution of India and discriminatory also.”

9. The application for amendment of writ petition was allowed vide order dated 13.12.2022, making the above quoted prayer clause (a)(i) as part of the prayer of the amended writ petition.

10. Mr. Manoj Kumar Gaur, the learned counsel for the petitioner submits that the petitioner having the requisite qualification of B.Sc. (Hons.) Biological Science is eligible for admission in M.Sc. Botany under the Merit Admission Category in terms of the criteria mentioned in the PG Admission Form available on the website of the university. The learned counsel further submits that the said form has never been withdrawn or cancelled nor any corrigendum has been issued providing for a change in the eligibility criteria. He submits that based on the criteria mentioned in the PG Admission Form, the petitioner was having a legitimate expectation.

11. The petition was though amended to incorporate a prayer to seek declaration that the different eligibility criteria prescribed for admission to M.Sc. Botany under Entrance Exam and Merit Categories is unconstitutional, but the learned counsel for the petitioner in his arguments did not elaborate on the point as to how the classification of admission criteria for M.Sc. Botany, on merit and entrance exam basis, is not based on

intelligible differentia and it did not have a nexus with the object sought to be achieved.

12. He also relies on the decision of the Supreme Court in *State of Uttar Pradesh vs. Karunesh Kumar & Ors.*, 2022 SCC OnLine SC 1706, to contend that the eligibility could not be changed in the middle of the selection process.

13. Mr. Mohidner J.S. Rupal, the learned counsel for the respondents, on the other hand, refutes all the contentions of the petitioner and submits that : (i) the correct eligibility criteria was mentioned in the Bulletin of Information 2022, which provides B.Sc. (Hons.) Botany from University of Delhi as the eligibility criterion for admission in M.Sc. Botany course under Merit Admission Category; (ii) the petitioner has not disclosed that the petitioner could not succeed in the Entrance Exam Category; (iii) different eligibility criteria for entrance exam admission category and merit admission category is being followed for last number of years which is borne out from the copies of Bulletin of Information of previous three years annexed with the counter affidavit; (iv) the petitioner is obliged to refer to the Bulletin of Information before filling the admission form and cannot take the excuse of inadvertent error in the admission form regarding the eligibility criteria for Merit Based Admission in M.Sc. Botany; (v) the petitioner could not challenge the eligibility criteria after having unsuccessfully participated in the admission process.

14. According to the Mr. Rupal, the admission process is now at the final stage with three admission lists already declared based on the eligibility criteria mentioned in the Bulletin of Information and in case the eligibility criteria for Merit Based Admission in M.Sc. Botany as mentioned in the

Bulletin of Information is quashed, the entire admission process will be required to be done *de novo*, depriving the students of the course to which they have already been admitted based on the eligibility criteria given in Bulletin of Information. He further contends that the eligibility criteria mentioned in the Bulletin of Information has been prescribed based on the inputs of academic experts in the field. Elaborating further, he submits that Entrance Examination Based Admission Eligibility criteria is broad based as students from B.Sc. (Hons.) Biological Sciences are also eligible in addition to B.Sc. (Hons.) Botany. That apart, even the students from other universities are also eligible. Whereas for Merit Based Admission in M.Sc. Botany course, only the students who are graduate in B.Sc. (Hons.) Botany from University of Delhi are eligible. He thus, urged that the classification of admission criteria for M.Sc. Botany on merit and entrance exam basis, is based on intelligible differentia and has a nexus with the object sought to be achieved.

15. I have heard the learned counsel for the parties and have examined the documents on record.

16. Undisputedly, the eligibility criteria for admission to M.Sc. Botany course under the Merit Admission Category, as mentioned in the Bulletin of Information 2022, is B.Sc. (Hons.) Botany from University of Delhi. Admittedly, the petitioner does not satisfy this criteria as she possesses the degree of B.Sc. (Hons.) Biological Science and not B.Sc. (Hons.) Botany. The petitioner was only eligible under the Entrance Exam Category. Indeed, the petitioner did apply under the Entrance Exam Category also. However, as mentioned in the rejoinder, she did not take the examination under the Entrance Exam Category as she was busy in preparing for another entrance

exam.

17. It is also not in dispute that the eligibility criteria for admission to M.Sc. Botany under Merit Category as mentioned in the Bulletin of Information 2022 is at variance with the one mentioned in the PG Admission Form available on the website. As noted above, the eligibility criteria under the Merit Category as mentioned in the Bulletin of Information is B.Sc. (Hons.) Botany from University of Delhi whereas the one stated in the Admission Form also includes B.Sc. (Hons.) Biological Science from University of Delhi apart from B.Sc. (Hons.) Botany.

18. In the backdrop of aforesaid factual matrix, the fundamental question which falls for consideration in the present petition is that which eligibility criteria will prevail, whether the one mentioned in the Bulletin of Information or the one given in the Admission Form.

19. The answer is not far to seek as the issue in regard to the binding character of the Bulletin of Information/prospectus is no more *res integra*. In **Varun Kumar Aggarwal vs. Union of India & Ors.**, 179 (2011) DLT 24, after noticing various precedents, the Division Bench of this court held that the prospectus is binding on the candidates as well as on the State including the machinery appointed by it for identifying the candidates for selection and admission. The relevant paras' of the decision reads as under:-

“14. Presently we shall refer to certain authorities in the field that have dealt with sanctity of a prospectus or brochure and the legal impact when it is changed in the midstream. In Dr. M. Vannila v. Tamil Nadu Public Services Commission, 2007 (3) CTC 69, a Division Bench of the High Court of Madras has opined thus:

“19. The principle that the prospectus is binding on all persons concerned has been laid by the Supreme

Court in Punjab Engineering College, Chandigarh v. Sanjay Gulati, (AIR 1983 SC 580 = 1983 (96) LW 172 S.N.). Following the same, a Division Bench of this Court has also observed in Rathnaswamy, Dr. A. v. Director of Medical Education (1986 WLR 207) that the rules and norms of the prospectus are to be strictly and solemnly adhered to. The same view is also taken by another Division Bench of this Court in Nithiyan P. and S.P. Prasanna v. State of Tamil Nadu (1994 WLR 624). The same principle is reiterated in the case of Dr. M. Ashiq Nihmathullah v. The Government of Tamil Nadu, 2005 WLR 697. It is clear that the prospectus is a piece of information and it is binding on the candidates as well as on the State including the machinery appointed by it for identifying the candidates for selection and admission.”

15. In *Indu Gupta v. Director Sports, Punjab*, AIR 1999 P&H 319 (FB), the Full Bench in paragraphs 9, 10 and 11 has expressed thus:

“9. A Full Bench of this Court in the case of Raj Singh v. Maharshi Dayanand University, (1994) 4 Recent Services Judgments, 289 disapproved the liberal construction of the terms and conditions of the brochure and specified the need for their strict adherence to avoid unnecessary prejudice to the candidate or the authority during the course of admission. The bench approved that the eligibility for admission to a course has to be seen according to the prospectus issued before the entrance test examination and that the admission has to be made on the basis of the instructions given in the prospectus having the force of law. While disapproving the law laid down by a Division Bench of this Court in the case of Madhvika Khurana (minor) v. M.D. University Civil Writ Petition No. 15367 of 1991, where contrary view had been taken, the Full Bench observed that the students seeking

admission to the professional colleges are even otherwise matured enough and supposed to understand the full implication of filling the admission form and compliance with the instructions contained in the brochure.

10. Subsequently, another Full Bench of this Court in the case of Rahul Prabhakar v. Punjab Technical University, Jalandhar, 1997 (3) RSJ 475: (AIR 1998 Punj. & Har. 18) recapitulated the entire law on the subject. The Full Bench was considering the same brochure for the previous year of the Punjab Technical University. The Court held as under:-

“A Full Bench of this Court in Amardeep Singh Sahota v. State of Punjab, (1993) 4 Serv LR 673 had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In Raj Singh v. Maharshi Dayanand University, 1994 (4) R.S.J. 289 another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in Sachin Gaur v. Punjab University, 1996 (1) RSJ 1: (AIR 1996 Punj. & Har. 109) took the view that there has to be a cut off date provided for admission and the same cannot be changed

afterwards. These views expressed by earlier Full Benches have been followed in CWP No. 6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the court in exercise of powers under Article 226 of the Constitution of India. Whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the coordinator or the competent authority as the case may be the same cannot be considered as having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed in violation of the terms of the brochure have only to be rejected.”

11. The cumulative effect of the above well enunciated principles of law, is that the terms and conditions of the brochure where they used preemptory language cannot be held to be merely declaratory. They have to be and must necessarily to be treated as mandatory. Their compliance would be essential otherwise the basic principle of fairness in such highly competitive entrance examinations would stand frustrated. Vesting of discretion in an individual in such matters, to waive or dilute the stipulated conditions of the brochure would per se introduce the element of discrimination, arbitrariness and unfairness. Such unrestricted discretion in contravention to the terms of the brochure would decimate the very intent behind the terms and conditions of the brochure, more particularly, where the cut off date itself has been provided in the

brochure. The brochure has the force of law. Submission of applications complete in all respects is a sine qua non to the valid acceptance and consideration of an application for allotment of seats in accordance with the terms prescribed in the brochure.

16. We have referred to the aforesaid decisions only to highlight that the conditions stipulated in the prospectus are guidelines for all concerned and everyone is required to follow the same in letter and spirit and not act in transgression."

(emphasis supplied)

20. Again, a Coordinate Bench in **Hritik Rana vs. Delhi Sports Council and Ors.**, (2020) SCC OnLine DEL 1822, emphasized on the binding character of the terms of brochure as well as on the principle of estoppel that a candidate cannot after having unsuccessfully participated in the selection process turn around and challenge the terms of criteria of the admission brochure. The relevant paragraphs of the judgment reads as under:-

"14. it is settled legal position that the terms of the brochure are binding upon a candidate. A candidate cannot after having participated in the selection process and after having been rejected for any reasons turn around and challenge the terms of the criteria of the admission brochure. In the present case, the petitioner has applied under the Bulletin of Information. He cannot after having participated in the selection process turn around and seek to challenge the terms of the stipulated in the selection process. In this context reference may be had to the judgment of a Coordinate Bench of this court in the case of Priyanka Chaudhary v. National Board of Examinations, 2016 SCC OnLine Del 5691 where this court held as follows:—

"11. The petitioners were well aware of the rules laid down by the information bulletin and despite the same the petitioners participated in the counseling process without any demur. The petitioners have opted for confirmed seats and have taken admission. No doubt that the petitioners are meritorious, but on account of the application of the rules as laid down by the information

bulletin, which is clear in terms of its application, the petitioners are clearly ineligible to participate in the second round of counseling commencing from 21st October, 2016.

(emphasis supplied)

21. It may also be apposite to refer to the decision of the Supreme Court in **Maharishi Dayanand University vs. Surjeet Kaur**, 2010 (11) SCC 159, wherein it was held that no mandamus can be issued directing educational institutions to act contrary to their own procedure. The relevant principles enunciated by the Supreme Court reads as under:-

“11. It is settled legal proposition that neither the court nor any tribunal has the competence to issue a direction contrary to law and to act in contravention of a statutory provision. The Court has no competence to issue a direction contrary to law nor the court can direct an authority to act in contravention of the statutory provisions.

12. In *State of Punjab v. Renuka Singla* [(1994) 1 SCC 175], dealing with a similar situation, this Court observed as under : (SCC p. 178, para 8)

“8. ... We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations....”

13. Similarly, in *Karnataka SRTC v. Ashrafulla Khan* [(2002) 2 SCC 560 : AIR 2002 SC 629], this Court held as under : (SCC pp. 572-73, para 27)

“27. ... The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injuncted by law.”

Similar view has been reiterated by this Court in *Manish Goel v. Rohini Goel* [(2010) 4 SCC 393 : (2010) 2 SCC (Civ) 162 : AIR 2010 SC 1099].”

22. In **Punjab Engineering College, Chandigarh vs. Sanjay Gulati**: AIR

1983 SC 580, while emphasizing that the rules of admission must be adhered to by the authorities of educational institutions, the Supreme Court observed as under:-

"5. We find that this situation has emboldened the erring authorities of educational institutions of various States to indulge in violating the norms of admission with impunity. They seem to feel that the courts will leave the admissions intact, even if the admissions are granted contrary to the rules and regulations. This is a most unsatisfactory state of affairs. Laws are meant to be obeyed, not flouted....."

(emphasis supplied)

23. Reverting to the facts of this case, the unrefuted position, as noted from the counter affidavit, is that the Bulletin of Information 2022 under the heading "Important Points" also emphasized that the Bulletin is binding on the candidates. The material part of the Bulletin of Information, 2022 as extracted from the counter affidavit, reads as under:-

".....BEFORE REGISTERING FOR CUET 2022, THE CANDIDATES ARE ADVISED TO CAREFULLY READ THE BULLETIN OF INFORMATION AND DELHI UNIVERSITY ACT, 1922 AND THE STATUTES, ORDINANCES, RULES AND REGULATIONS OF THE UNIVERSITY OF DELHI, AVAILABLE ON THE UNIVERSITY WEBSITE, WOULD BE BINDING ON THEM."

24. Similarly, the Bulletin of Information 2022 also contains the following word of caution and disclaimer:-

".....Candidates are responsible for regularly checking the website and admission portals of NTA and University of Delhi for updates related to CUET 2022 and admission related policies. Grievances resulting from not having consulted this Bulletin and the Website(s) will not be entertained."

25. Even the relevant extract of the Bulletin of Information of previous

three years, i.e., 2017-2018, 2019-2020 and 2020-2021 [Annexure R-2 (Colly.)], which have been annexed by the respondent no.1/university with its counter affidavit, reveal that the same eligibility criteria, as mentioned in the Bulletin of Information 2022, has been consistently followed for admission to M.Sc. Botany course in the past, both for the Entrance Exam Category and the Merit Admission Category.

26. Incidentally, it is also not the case of the petitioner that the eligibility criteria for admission in M.Sc. Botany under the Merit Category, was not stipulated in the Bulletin of Information 2022 or she was not aware about the same. On the contrary, a specific reference has been made to the Eligibility Criteria extracted from the Bulletin of Information 2022 (Annexure P-3, page 27), in paragraph 2.2 of the writ petition. Even during the course of arguments, the learned counsel for the petitioner, in response to a query from the court, admitted that the petitioner was aware that the eligibility for admission to M.Sc. Botany has been provided in the Bulletin of Information 2022, where the criteria under the Merit Category has been mentioned as B.Sc. (Hons.) Botany. He, however, sought to invoke the principle of estoppel and legitimate expectation on the basis of the eligibility criteria as mentioned in the PG Admission Form.

27. In view of the legal and factual position as stated above, it is beyond any cavil that the eligibility criteria as mentioned in Bulletin of Information 2022 shall govern the admission to M.Sc. Botany course under the Merit Category. The petitioner cannot take advantage of, or refuge under, the inadvertent error that has crept in the Admission Form available on the website. Such a mistake on part of the respondent-university would not clothe the petitioner with any legal right. Surely, the doctrine of estoppel

cannot be applied against public authorities when their mistaken advice or representation is found to be in breach of a Statute.¹ Obviously, this court cannot direct the respondent-university to commit breach of its Bulletin of Information.

28. It is settled legal position that the Bulletin of Information has the force of law and it is also trite that there is no estoppel against law. Therefore, the doctrine of 'legitimate expectation' and 'estoppel' cannot be pressed against the respondent-university when the mistake in the PG Admission Form is *ex facie* contrary to the eligibility criteria mentioned in the Bulletin of Information.

29. The challenge to the eligibility criteria premised on the ground of discrimination, as noted above, was not seriously pressed by the learned counsel for the petitioner, and rightly so because the petitioner was all along aware that the eligibility criteria of M.Sc. Botany, both under the Entrance Exam Category as well as the Merit Category, has been given in the Bulletin of Information but the petitioner did not challenge the same before participating in the admission process. The petitioner did not even seek clarification from the respondent university as to which eligibility criteria, the one given in the Bulletin of Information or that mentioned in the PG Admission Form, will apply. Now after having unsuccessfully participated in the selection process, the petitioner cannot turn around and challenge the criteria of admission given in the Bulletin of Information.

30. The law in this regard is far too well settled to require articulation or reiteration. However, illustratively, it may be apt to refer to the decision of

¹ Hira Tikkoo v. Union Territory, Chandigarh, (2004) 6 SCC 765

the Supreme Court in ***Dhananjay Malik v. State of Uttaranchal: (2008) 4 SCC 171***, wherein it was held that if a candidate, despite having knowledge of the educational qualification as clearly indicated in the advertisement, participates in the selection process and takes a chance, on failing in the process such candidate cannot turn around and assail the selection criteria on the ground that that the requisite qualifications were contrary to the Rules. The following passages from the said decision could advantageously be referred to:-

7. It is not disputed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

8. In Madan Lal v. State of J&K [(1995) 3 SCC 486 : 1995 SCC (L&S) 712 : (1995) 29 ATC 603] this Court pointed out that when the petitioners appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

9. In the present case, as already pointed out, the respondent-writ petitioners herein participated in the selection process

without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.”

31. To the same effect is the decision of the Supreme Court in *Manish Kumar Shahi vs. State of Bihar*: (2010) 12 SCC 576, wherein it was observed as under:-

“16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the petitioner is not entitled to challenge the criteria or process of selection. Surely, if the petitioner's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The petitioner invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the petitioner clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition.”

32. Now turning to the decision relied upon by the learned counsel for the petitioner in ***Karunesh Kumar*** (*supra*), it is noted that the said decision is on the point that qualification or eligibility cannot be changed in the middle of the selection process, but the said decision is not applicable to the facts of the present case. In the present case, the rules of the game were not changed midway. In fact, like the previous three years, the same criterion was notified in the Bulletin of Information 2022. The said decision, therefore, does not advance the case of the petitioner.

33. In view of the above, there is no merit in the writ petition and, accordingly, the same is dismissed.

34. However, before parting with this case, this court would like to observe that the University of Delhi needs to take immediate corrective measures in identifying and removing all such material from its website which mentions the eligibility criteria for admission to any course, contrary to the one stipulated in the Bulletin of Information or the statutory Rules, Regulations and Ordinances of the University, for such contradictory and misleading criteria not only creates confusion in the minds of the candidates but also leads to unwarranted litigation.

VIKAS MAHAJAN, J.

JANUARY 24, 2023
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