

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL
SEAT AT JABALPUR**

Case No. Parties Name	W.P. No.3479-2021 <i>Pratha Rajak</i> vs. <i>Dr. Harisingh Gour Vishwavidyalaya & others</i>
Date of Order	01/04/2021
Bench Constituted	Division Bench: Justice Prakash Shrivastava Smt. Justice Anjuli Palo
Order passed by	Justice Prakash Shrivastava
Whether approved for reporting	Yes
Name of counsels for parties	For petitioner: Shri Amit Mishra, Advocate. For respondents: Smt. Shobha Menon, learned senior counsel with Shri Rahul Choubey, Advocate.
Law laid down	➤ If a candidate takes a calculated chance and appears in the selection process then being unsuccessful, he cannot challenge the process. ➤ After participating in selection process without any objection and when the process is over, a candidate is estopped from challenging the brochure condition and condition of admission relating to sports quota.
Significant paragraph numbers	12,13,14 & 15

**ORDER
(01.04.2021)**

Per : Prakash Shrivastava, J.

By this petition, the petitioner has prayed for a direction to the respondents to grant her admission in B.A. L.L.B. Course for

academic session 2020-2021 under the sports quota.

2. The facts in nutshell are that petitioner had applied for admission in B.A. L.L.B. Course on the basis of the admission brochure of the respondent No.1-University and had participated in the entrance test conducted All India basis on 17.10.2020. The petitioner is an OBC candidate and her name was not included in the meritlist, therefore, she has approached this Court.

3. The respondents have filed the reply stating that the petitioner had obtained marks less than the cut off marks for the OBC category and the petitioner is also not entitled to the benefit of relaxation under the sports quota, therefore, she has been deprived the admission.

4. Learned counsel appearing for the petitioner submits that in terms of the unamended Ordinance, the petitioner fulfills the requisite condition for relaxation of marks under the sports quota, therefore, she has wrongly been denied the said benefit. He further submits that the amended Ordinance has not been notified, therefore, the same has no impact.

5. Learned counsel for the respondents has opposed the petition by submitting that the petitioner has no right to challenge the condition of the admission brochure because after participating in the selection process and having failed, she cannot agitate the issue now. She further submits that the selected candidates under the OBC category have not been impleaded and that the Ordinance has duly been amended and in terms thereof, the petitioner is not entitled to the relaxation in the sports quota.

6. Having heard learned counsel for the parties and on perusal of the record, it is noticed that the petitioner has obtained 120 marks in the entrance test whereas the cut off mark for OBC (NCL) category is 126. Since the petitioner has obtained marks less than the cut off marks, therefore, she has not been granted admission.

7. The petitioner is claiming benefit of relaxation in the cut off marks under the sports quota. In the Prospectus and Admission Brochure 2020-21, following was the condition for eligibility

prescribed under the sports quota:-

“The following conditions should be fulfilled for the eligibility for seats under sports quota:-

- (i) The candidates should fulfill the minimum eligibility criteria for admission to the programme.
- (ii) The candidate should have appeared in the Entrance Test of the concerned programme and cleared the cut off marks, if any, for qualifying in the Entrance Test.
- (iii) The candidate must fulfill the participation rules/norms of Association of Indian Universities (AIU).
- (iv) The candidate should have played National (senior/junior/sub-junior/youth school/Games Federation of India) at least up to qualifying examination or should have secured a position in Zonal/Inter-Zonal/Direct All India up to 4th position Inter-University Tournament of AIU games or have participated at these levels.

The merit of the qualified candidates for the admission under Sports Quota shall be decided by the Sports achievement marks awarded on the basis of certificates of achievements. Highest Sports achievement marks/performance of a candidate will only be considered while counting the sports achievement marks.

Sport Achievement Marks in various categories are as follows:								
A-National (Senior/Junior/Youth)			B-All India/Inter-Zonal Inter-University organized by AIU			C-Zonal Inter- University organized by AIU		
Position	Team	Individual	Position	Team	Individual	Position	Team	Individual
1 st Position	30	35	1 st Position	30	35	1 st Position	15	20
2 nd Position	25	30	2 nd Position	25	30	2 nd Position	10	15
3 rd Position	20	25	3 rd Position	20	25	3 rd Position	08	10
Participation	08	08	4 th Position	15	15	4 th Position	05	08
			Vizy Trophy	10	-	Participation	03	04
			Participation	08	08			

In case of equal sports achievement points of candidates in a School, the inter-se (between or among themselves) ranking will be decided on the basis of the marks obtained in the Entrance Test. And, if the marks obtained by candidates in the Entrance Test is also equal; then the aggregate percentage of marks in the qualifying examination will be considered. If these are also equal, then the candidate senior in age will be preferred.

Note- Sports Quota candidates/sportspersons must submit the hard copy of the online submitted from along with self-attested copies of relevant certificates latest by 22 May 2020 on the address: Admission Cell, Doctor Harisingh Gour

Vishwavidyalaya, Sagar, 470003, Madhya Pradesh, India by Hand/Speed Post.”

8. The petitioner had represented the State in Throw Ball competition and admittedly the petitioner does not fulfill the above condition prescribed in the admission brochure.

9. The petitioner is placing reliance upon the unamended Ordinance No.44 Clause 3.1 of which reads as under:

“3.1 Outstanding Players

- (b) A specified number of seats in both the under-graduate and post-graduate Courses, may be earmarked by the Academic Council for admission of outstanding players and sports persons, who have represented their Universities/Region/State, provided that they fulfill the minimum eligibility requirements prescribed for seeking admission to various Courses.
- (c) Relaxation to the extent of 5% of marks in the aggregate or in the subject, as the case may be, will be given to such candidates.
- (d) Such students will be nominated by the Vice-Chancellor over and above the seats allotted to each Course, on the recommendation of the Games and Sports Committee.”

10. The stand of the respondents is that the Executive Council in its 22nd meeting dated 24.01.2018 had approved the amendment in Ordinance 44 and had resolved to submit the amended Ordinance to MHRD for the perusal of Hon’ble Visitor and vide communication dated 02.02.2018, the Additional Secretary was conveyed to lay the amended Ordinance 44 for perusal to Hon’ble Visitor and the condition mentioned in the admission brochure was in consonance with the amended Ordinance.

11. Counsel for the petitioner has raised an issue that the amendment has not been notified, therefore, the amended Ordinance cannot be looked into but such an issue need not be gone into at this stage because the petitioner has participated in the entrance examination with open eyes on the basis of the eligibility condition which was disclosed in the admission brochure 2020-21. The result was declared on 04.11.2020, the Online counseling was held from 03.12.2020 to 09.12.2020 and thereafter Offline counseling was held

from 07.01.2021 and under sports quota on 13.01.2021. Further special counseling was held on 12.02.2021 and finally the cut off mark for OBC (NCL) category was 126 whereas the petitioner has secured only 120 marks which was below the cut off marks.

12. The present petition has been filed on 10.02.2021 when the selection process was almost over. Hence, at this stage, the petitioner is estopped from challenging the brochure condition and condition of admission relating to sports quota. The petitioner was aware the condition mentioned in brochure since beginning and she has participated in the process without raising objection, hence when the process is over, the petitioner is estopped from questioning the same.

13. It is the settled position in law that if a candidate takes a calculated chance and appears in the selection process then being unsuccessful, he cannot challenge the process. The candidate having opportunity to raise objection to a condition or procedure adopted does not object to it though within knowledge and participate in the selection process cannot turn back after the completion of the process and question it as he is estopped from questioning it on the principle of estoppel. Supreme Court in the matter of *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and others* reported in **1986 (Supp) SCC 285** has held as under:

“24. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination.”

14. Supreme Court in the matter of *Vijendra Kumar Verma Vs. Public Service Commission, Uttarkhand and others* reported in **2011 (1) SCC 150** considering this issue has held that:

“24. When the list of successful candidates in the written examination was published in such notification itself, it was also made clear that the knowledge of the candidates with regard to basic knowledge of computer operation would be tested at the

time of interview for which knowledge of Microsoft Operating System and Microsoft Office Operation would be essential. In the call letter also which was sent to the appellant at the time of calling him for interview, the aforesaid criteria was reiterated and spelt out. Therefore, no minimum benchmark or a new procedure was ever introduced during the midstream of the selection process. All the candidates knew the requirements of the selection process and were also fully aware that they must possess the basic knowledge of computer operation meaning thereby Microsoft Operating System and Microsoft Office Operation. Knowing the said criteria, the appellant also appeared in the interview, faced the questions from the expert of computer application and has taken a chance and opportunity therein without any protest at any stage and now cannot turn back to state that the aforesaid procedure adopted was wrong and without jurisdiction.

25. In this connection, we may refer to the decision of the Supreme Court in *G. Sarana (Dr.) Vs. University of Lucknow* wherein also a similar stand was taken by a candidate and in that context the Supreme Court had declared that the candidate who participated in the selection process cannot challenge the validity of the said selection process after appearing in the said selection process and taking opportunity of being selected. Para 15 inter alia reads thus: (SCC p.591)

"15.... He seems to have voluntarily appeared before the Committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the Committee."

26. In *P.S. Gopinathan Vs. State of Kerala*, this Court relying on the above principle held thus (SCC p. 84,para 44);

"44.Apart from the fact that the appellant accepted his posting orders without any demur in that capacity, his subsequent order of appointment dated 15-7-1992 issued by the Governor had not been challenged by the appellant. Once he chose to join the mainstream on the basis of option given to him, he cannot turn back and challenge the conditions. He could have opted not to join at all but he did not do so. Now it does not lie in his mouth to clamour regarding the cut-off date or for that matter any other condition. The High Court, therefore, in our opinion, rightly held that the appellant is estopped and precluded from questioning the said order dated 14-1-1992. The application of principles of estoppel, waiver and acquiescence has been considered by us in many cases, one of them being *G. Sarana (Dr.) v. University of Lucknow.....*"

27. In *Union of India and Others vs. S. Vinodh Kumar* in SCC para 18 it was held that (SCC p.107)

"18.....it is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same."

28. Besides, in K.H. Siraj vs. High Court of Kerala in SCC paras 72 and 74 it was held that candidates who participated in the interview with knowledge that for selection they had to secure prescribed minimum marks on being unsuccessful in interview could not turn around and challenge that the said provision of minimum marks was improper, said challenge is liable to be dismissed on the ground of estoppel.”

15. In a recent judgment in the matter of *Ramjit Singh Kardam and others Vs. Sanjeev Kumar and others* reported in 2020 SCC OnLine SC 448, the Supreme Court has reiterated the position by taking note of the earlier judgment on the issue as under:

“37. The proposition that a candidate, who participates in a selection without a demur taking a calculated chance to get selected cannot turn around and challenge the criteria of selection and the constitution of the selection committee is well settled. The appellants have placed reliance on judgment of this Court in Madan Lal Vs. State of J&K, (1995) 3 SCC 486; K.A. Nagamani Vs. Indian Airlines, (2009) 5 SCC 515; Manish Kumar Shahi Vs. State of Bihar , (2010) 12 SCC 576; Madras Institute of Development Studies Vs. K. Sivasubramaniyan and Others, (2016) 1 SCC 454 and Ashok Kumar and Another Vs. State of Bihar, (2017) 4 SCC 357.”

16. The record further reveals that admissions have already been granted to the students under the sports quota on the basis of the eligibility condition which was prescribed in the admission brochure. That process is complete, the classes have started. Learned counsel for the respondents has pointed out that the classes are continuing since 05.01.2021 and 1st semester examinations are approaching. If at this stage any interference is made and the petitioner is granted relaxation, then one of the OBC candidates, who has already been admitted, will be displaced, therefore, without joining such selected candidate, the petitioner is not entitled for any relief. Hence, at this stage, no case is made out to interfere in the present matter. The petition is accordingly **dismissed**.

(PRAKASH SHRIVASTAVA)
JUDGE

(SMT. ANJULI PALO)
JUDGE