

THE HIGH COURT OF MEGHALAYA

WP(C). No. 221 of 2015

1. Miss Jemica Kivigho Zhimomi
Aged about 21 years
Daughter of Shri. Kivigho Zhimomi
Resident of R.T. Villa, Nongrim Hills
East Khasi Hills District, Shillong,
Meghalaya.
2. Miss Rachel Aier
Aged about 22 years
Daughter of Shri. Loler Aier
Resident of Yimyu Ward,
Mokokchung, Nagaland.
3. Miss Kuvesalu Tureng
Aged about 21 years
Daughter of Shri. Yeskhusu Tureng
Resident of Toulazouma, Dimapur
Nagaland.
4. Miss Talikala
Aged about 22 years
Daughter of Late Kilenmeren Longkumer
Resident of Ungma Village,
Mokochung, Nagaland.
5. Miss Medolenuo Ambrocia Loucu
Aged about 21 years
Daughter of Shri Thepfusalie Thomas
Resident of Zhadima Villa GE,
Kohima, Nagaland.
6. Miss Neiphresenuo Pienyu
Aged about 20 years
Daughter of Shri. Theguolhoulie Pienyu
Resident of Chedema Village, Kohima
Nagaland.
7. Miss Neikhrienuo Vitho
Aged about 21 years,
Daughter of Shri. Pezatuo Vitho
Resident of Gariphrma Village,
Kenuozou Colony, Nagaland.

8. Mr. Besii Athisii
Aged about 22 years,
Son of Shri. Besii,
Resident of Shajouba Village, P.O
Tadubi, Sanapati District, Manipur.
9. Mr. Dzuzehol Zao
Aged about 23 years
Son of Late. Ashoo Zao,
Resident of Old Minister Hill
Mohonkhola, Kohima, Nagaland.
10. Miss Ketuniphre-e Gwirie
Aged about 19 years
Daughter of Shri. Rokolhubi Gwirie
Resident of Jotsoma
Kohima, Nagaland.
11. Miss Veineinem Singson
Aged about 26 years
Daughter of Shri Paokhokam Singson
Resident of Sirhima Village, District,
Dimapur, Nagaland.
12. Mr. Ayiele Zhasa
Aged about 25 years,
Son of Shri Nguto Zhasa
Resident of Kigwema Village Kohima
Nagaland.

... Petitioners

-Versus-

1. The Vice Chancellor,
North Eastern Hill University (NEHU)
Shillong, Meghalaya.
2. The Convener, Admission Committee,
Political Science Department, NEHU,
Shillong, Meghalaya.
3. Head of the Department,
Political Science, NEHU, Shillong,
Meghalaya.
4. Mr. Davidson Nongrum
Political Science Department, NEHU,
Shillong, Meghalaya.

5. Miss Viseno Koutsu
Political Science Department, NEHU,
Shillong, Meghalaya.
6. Miss Wandabiang Chyne
Political Science Department, NEHU,
Shillong, Meghalaya.
7. Miss Wate-u Mero,
Political Science Department, NEHU,
Shillong, Meghalaya.
8. Mr. Vabeikhokhei Solo,
Political Science Department, NEHU,
Shillong, Meghalaya.
9. Miss Banrilang Rynksai
Political Science Department, NEHU,
Shillong, Meghalaya.
10. Miss Yangkylochiam R. Marak
Political Science Department, NEHU,
Shillong, Meghalaya.
11. Mr. Pyndapborlang Wahlang
Political Science Department, NEHU,
Shillong, Meghalaya.
12. Mr. Pyndapmi Marboh,
Political Science Department, NEHU,
Shillong, Meghalaya.
13. Miss. Trebanda N. Sutnga
Political Science Department, NEHU,
Shillong, Meghalaya.
14. Miss. Deiwasuk Sumer
Political Science Department, NEHU,
Shillong, Meghalaya.
15. Miss C. Lallawmawmi
Political Science Department, NEHU,
Shillong, Meghalaya.
16. Mr. Graceson Murry
Political Science Department, NEHU,
Shillong, Meghalaya.
17. Miss Lanusenla Pongen
Political Science Department, NEHU,
Shillong, Meghalaya.

18. Mr. P.C. Laltlanzova,
Political Science Department, NEHU,
Shillong, Meghalaya.
19. Miss. Balentimery Thongni,
Political Science Department, NEHU,
Shillong, Meghalaya.

.....Respondents

**BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

For the petitioner : Mr. H.Abraham, Adv.

For the respondents : Mr. K.Khan, Adv.

Date of hearing : 24-11-2015

Date of Judgment : 04-12-2015

JUDGMENT AND ORDER

In this writ petition, the petitioners 12 in Nos. are praying for a direction to the respondents-university to admit them in MA (Political Science) course for the academic session 2015-2017 of the North Eastern Hill University (for short NEHU) on the basis of the provisional select list dated 13-08-2015 after setting aside the final select list of the candidates in order of merit dated 18-08-2015.

2. Heard Mr. H.Abraham, learned counsel appearing for the petitioners and also Mr. K.Khan, learned counsel appearing for the respondents-university.

3. All the petitioners had graduated i.e. BA (Honours) in Political Science in First Class. Some of them had obtained the BA (Honours) in Political Science from NEHU and some from Nagaland University and Autonomous NAAC Re-accredited-A. The particulars of the petitioners so far as their college, university, division and percentage are concerned, are shown in the chart below:

<i>Sl. No.</i>	<i>Name</i>	<i>College</i>	<i>University</i>	<i>Division</i>	<i>Percentage</i>
1.	<i>Miss. Jemica Kivigho Zhimomi</i>	<i>St.Edmund's College, Shillong</i>	<i>NEHU</i>	<i>1st Topper</i>	<i>62.13%</i>
2.	<i>Miss Rachel Aier</i>	<i>St.Edmund's College, Shillong</i>	<i>NEHU</i>	<i>2nd Topper</i>	<i>61.25%</i>
3.	<i>Miss Kuvesalu Tureng</i>	<i>Patkai Christian College</i>	<i>Autonomous NAAC Re-accredited</i>	<i>1st Division</i>	<i>70.83%</i>
4.	<i>Miss Talikala</i>	<i>Baptist College, Kohima</i>	<i>Nagaland University</i>	<i>1st Division</i>	<i>72.78%</i>
5.	<i>Miss Medolenuo Ambrocia Loucu</i>	<i>St.Joseph's College, Kohima</i>	<i>Nagaland University</i>	<i>1st Division</i>	<i>76.21%</i>
6.	<i>Miss. Neiphresenuo Pienju</i>	<i>St.Joseph's College, Kohima</i>	<i>Nagaland University</i>	<i>1st Division</i>	<i>71.71%</i>
7.	<i>Miss Neikhrienue Vitho</i>	<i>St.Joseph's College, Kohima</i>	<i>Nagaland University</i>	<i>1st Division</i>	<i>71.78%</i>
8.	<i>Mr. Besii Athisii</i>	<i>St.Joseph's College Kohima</i>	<i>Nagaland University</i>	<i>1st Division</i>	<i>73.28%</i>
9.	<i>Mr. Dzuzehol Zao</i>	<i>St.Joseph's College Kohima</i>	<i>Nagaland University</i>	<i>1st Division</i>	<i>70.21%</i>
10.	<i>Mr. Ketuniphre-e Gwirie</i>	<i>Sazolie College Jotsoma</i>	<i>Nagaland University</i>	<i>1st Division</i>	<i>70.42%</i>
11.	<i>Miss. Veineinem Singson</i>	<i>St.Joseph's College Kohima</i>	<i>Nagaland University</i>	<i>1st Division</i>	<i>70.64%</i>
12.	<i>Mr. Ayiele Zhasa</i>	<i>St.Joseph's College Kohima</i>	<i>Nagaland University</i>	<i>1st Division</i>	<i>73.92%</i>

4. The petitioners had applied for admission in Post Degree Course i.e. M.A in Political Science, NEHU for the academic session 2015-2017 by furnishing all the details asked by the concerned authorities of NEHU, Shillong and accordingly the application forms of the petitioners were accepted by the authorities. As the petitioners had fulfilled all the requirements for admission in Post Degree Course in M.A in Political Science of NEHU, they had appeared in the entrance test which was conducted on 11-08-2015. It is stated that all of them had done excellently well in the said entrance test. The result of the entrance test was declared on 13-08-2015 vide notification dated 13-08-2015 on merit basis by the admission committee consisting of the Convener and two other members. Altogether 47 candidates were declared selected, out of which 21 candidates were from open category and 26 candidates from SC/ST category. The said select list dated 13-08-2015 was admittedly a provisional list of selected candidates for admission to M.A Course in Political Science subject, and verification of original mark sheet and certificate was scheduled to be held on 20-08-2015 at 10.00 AM to 3.00PM in the Department, failing which the application for admission shall stand forfeited. The respective merit position of the petitioners as per the said provisional list of the selected candidates dated 13-08-2015 are as follows:

- i) *Petitioner No. 1 Serial No. 44*
- ii) *Petitioner No. 2 Serial No. 35*
- iii) *Petitioner No. 3 Serial No. 15*
- iv) *Petitioner No. 4 Serial No. 21*
- v) *Petitioner No. 5 Serial No. 9*
- vi) *Petitioner No. 6 Serial No. 29.*
- vii) *Petitioner No. 7 Serial No. 46*
- viii) *Petitioner No. 8 Serial No. 11*
- ix) *Petitioner No. 9 Serial No. 36*

- x) Petitioner No. 10 Serial No. 32*
- xi) Petitioner No. 11 Serial No. 22*
- xii) Petitioner No. 12 Serial No. 10.”*

5. To the surprise of the petitioners, another list of selected candidates for admission to the Post Degree Course of MA in Political Science was published on 18-08-2015 wherein the names of the petitioners had been removed and another 16 new names, whose names did not appear in the first merit list dated 13-08-2015 had been added. It is the further case of the petitioners that the said revised list dated 18-08-2015 was published without assigning any reason for changing the first select list dated 13-08-2015. The new names which were subsequently added in the second list were not even in the waiting list as per the first provisional list of the selected candidates dated 13-08-2015.

6. The petitioners at their best level had tried to find out the reasons as to why the admission to M.A course in Political Science was not given as per the first provisional select list dated 13-08-2015 and also as to why the revised list dated 18-08-2015 was published without any justification or reasons, but the petitioners could not get any reasons for issuing the second merit list dated 18-08-2015. The petitioners had filed a representation vide letter dated 21-08-2015 before the Vice Chancellor, NEHU, Shillong for further clarifications for injustice done to the petitioners by the university and at the same time sought for

alternative arrangement for the petitioners by allowing them to take admission on the basis of the said provisional select list dated 13-08-2015. It is the further case of the petitioners that there was no reason for not admitting the petitioners on the basis of the provisional select list dated 13-08-2015 and also there is no reason for issuing the second select list dated 18-08-2015.

7. The petitioner Nos. 6, 7 and 12 had applied for admission to M.A in Political Science in Nagaland University and selected for the admission. As they had been provisionally selected under the said provisional select list dated 13-08-2015 for admission to M.A course in Political Science in NEHU, Shillong, they had subsequently withdrawn the admission in Nagaland University vide withdrawal letter dated 14-08-2015. The petitioners were neither admitted in Nagaland University nor in NEHU, Shillong, because of the said second select list dated 18-08-2015. As a result, the petitioners had faced immense mental hardship and also lost one precious academic year. Having no alternative, the petitioners had filed the present writ petition for the prayer mentioned above.

8. The respondent-university i.e. respondents No. 1 and 2 had filed a joint affidavit-in-opposition wherein the respondents-university stated that after the advertisement for admission to M.A in Political Science, the entrance test examination of the candidates was conducted on 11-08-2015. Thereafter, a provisional list of the selected candidates for admission to MA in

Political Science was prepared by the Political Science Department on 13-08-2015; and that provisional list was published on 13-08-2015. It is also the further case of the respondent-university that none of the writ petitioners whose names appeared in the provisional list dated 13-08-2015 were admitted to M.A in Political Science programme/course for the academic session 2015-2017. The first provisional list of the selected candidates dated 13-08-2015 was subsequently withdrawn vide notice dated 17-08-2015 by the head of department of Political Science as there was inadvertent error in calculation of the marks of the candidates which was contrary to the NEHU regulation and the direction issued by the competent authority of NEHU. After the error was pointed out by the competent authority, the final list of the selected candidates for admission to M.A in Political Science course was declared on 18-08-2015 in which the names of the petitioners in order of merit stood at below Serial No. 48 whereas there were many other applicants whose names were above the petitioners. The answering respondents further stated that admission to Post Graduate Course in Political Science should be in accordance with NEHU regulation under OC-7 regulation of the university as mentioned in the NEHU prospectus and the instructions issued by the competent authority. The performance in B.A (Honours) is not only the criterion for admission to the M.A Programme, as the admission is based on the criteria of 50% marks secured in the under graduate level, 50% in the entrance exam, and a weightage of 10% to students who passed their degrees from NEHU.

9. The respondents-university in their affidavit further stated that the total nos. of applicants for the M.A programme or course in Political Science received was 516, total nos. of valid applications after scrutiny was 373, the total nos. of candidates who appeared in the written test was 201, and the total nos. of seats for the Department of Political Science is 52. As per the prospectus, 21 candidates are to be selected from the general category, 26 from the SC/ST category and 5 from the university quota. The ranking of the petitioners in the first provisional list dated 13-08-2015 and the revised select list dated 18-08-2015 are as follows:

<i>Petitioners</i>	<i>Ranking in the first list 13-08-2015</i>	<i>Ranking in the Revised list 18-08-2015</i>	<i>Entrance Test Marks</i>
<i>P1</i>	<i>45</i>	<i>94</i>	<i>2</i>
<i>P2</i>	<i>35</i>	<i>58</i>	<i>4</i>
<i>P3</i>	<i>15</i>	<i>52</i>	<i>7</i>
<i>P4</i>	<i>21</i>	<i>103</i>	<i>4</i>
<i>P5</i>	<i>9</i>	<i>78</i>	<i>4</i>
<i>P6</i>	<i>29</i>	<i>110</i>	<i>4</i>
<i>P7</i>	<i>47</i>	<i>148</i>	<i>2</i>
<i>P8</i>	<i>11</i>	<i>57</i>	<i>6</i>
<i>P9</i>	<i>36</i>	<i>93</i>	<i>5</i>
<i>P10</i>	<i>32</i>	<i>90</i>	<i>5</i>
<i>P11</i>	<i>22</i>	<i>68</i>	<i>6</i>
<i>P12</i>	<i>10</i>	<i>54</i>	<i>6</i>

10. The respondents-university further stated that on 17-08-2015, the NEHUSU pointed out to the Department of Political Science the error in calculation of the total score and demanded rectification of the same. Further, the Political Science Department had received a letter from the DR Academic, NEHU on 14-08-2015 at 4.00PM elaborating the method of calculation of B.A marks, entrance test for finalisation of admission to M.A

programme. As 15th August, 2015 and 16th August, 2015 were declared holidays, the Department could not take any further action, it was only on 17th August, 2015 when the university opened, the Department could take up their further course of action. As the first list was prepared prior to the receipt of the guidelines from DR Academic and also as pointed by the NEHUSU, the Department had to recalculate and revise the merit list. The revised list was published on 18-08-2015 i.e. 2(two) days prior to the verification/admission date as given in the first select list dated 13-08-2015. As such, none of the candidates of the first provisional select list dated 13-08-2015 had been admitted to M.A programme in Political Science for the academic session 2015-2017. The consolidated merit list of the candidates for admission to Political Science course dated 18-08-2015 which shows the marks scored by the candidates in the test calculated as per the Ordinance OC-7 is also annexed as annexure A-3 to the affidavit-in-opposition. The respondents-university also annexed copy of the consolidated merit list of the candidates in the provisional select list dated 13-08-2015 along with the marks scored by the candidates which were not correctly calculated in compliance with the Ordinance OC-7 as annexure A-1 to the affidavit-in-opposition.

11. This Court has also given anxious consideration to the said select merit list of the candidates dated 13-08-2015 and the said final list dated 18-08-2015 keeping in view the provisions of the NEHU Act and the concerned Ordinance. The Parliament in the

twenty fourth year of the Republic of India enacted an act called the North Eastern Hill University Act, 1973. Section 26 of the Act, 1973 provides the provisions for making the Ordinance. Section 26 of the Act, 1973 is quoted hereunder:

“Section 26 Ordinance

(1) Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely:

(a) the admission of students to the University and their enrolment as such;

(b) the courses of study to be laid down for all degrees, diplomas and certificates of the University;

(c) the medium of instructions and examination;

(d) the award of degrees, diplomas, certificates and other academic distinctions, the qualifications for the same and training of the same;

(e) the fees to be charged for courses of study in the University and for admission to the examinations, degrees and diplomas of the University;

(f) the conditions of award of fellowships, scholarships, studentships, medals and prizes;

(g) the conduct of examinations, including the term of office and of appointment and the duties of examining bodies, examiners and moderators;

(h) the conditions of residence of the students of the University;

(i) the special arrangements, if any, which may be made for the residence, discipline and teaching of women students and the prescribing of special courses of studies for them;

(j) the appointment and emoluments of employees other than those for whom provision has been made in the Statutes;

(k) the establishment of Centres of Studies, Boards of Studies, Special Centres, Specialised Laboratories and other Committees;

(l) the manner of co-operation and collaboration with other Universities and authorities including learned bodies or associations;

(m) the creation, composition and functions of any other body which is considered necessary for improving the academic life of the University;

(n) such other terms and conditions of service of teachers and other academic staff as are not prescribed by the Statutes;

(o) the management of Colleges and Institutions established by the University;

(p) the supervision and management of Colleges and Institutions admitted to the privileges of the University; and

(q) all other matters which by this Act or the Statutes may be provided for by the Ordinances.

(2) The first Ordinances shall be made by the Vice-Chancellor with the previous approval of the Central Government and the Ordinances so made may be amended, repealed or added to at any time by the Executive Council in the manner prescribed by the Statutes."

Under Section 26 (1) (a) and (b) of the Act of 1973, the Ordinance for admission to the University and their enrolment and the course of study for all degrees, diplomas and certificates of the University could be made. The University made the Ordinance i.e. Ordinance OC-1 for admission to Post Graduate Department and the OC-7 for Master Degree Programme in Arts, Science and Commerce. The relevant portion of the Ordinance i.e. OC-1 is quoted hereunder:

**“NORTH-EASTERN HILL UNIVERSITY
REGULATIONS
ON ADMISSION TO POST GRADUATE
DEPARTMENTS**

(Under Ordinance OC-1)

Ordinance OC-1

1. The number of seats available for admission into each department will depend on infrastructure facilities available.

2. Only those candidates who have passed a Three Year Degree Course (Honours) in the relevant subject shall ordinarily be considered for admission to the Master Degree Course. However, subject to availability of seats upto 10% percent of the seats may be assigned to students from other disciplines. It is also provided that if teaching of Major/Honours in a subject has not been sufficiently developed within the jurisdiction of the University, or in any unit in particular, seats in the concerned Departments may be filled in a manner as may be decided by the respective Department.

3. A candidate with 50% marks in B.Ed. may also apply for Admission to M.A. Education Course only.

7. Any or all the seats under category 4(iii) will stand converted to category 4(iv) if unfilled. Any or all the seats and converted of category 4(iv) will stand transferred to category 4(i) if unfilled.

8. Departments may, if they consider necessary, conduct written test/interview for admission to the Post-Graduate Programme in accordance with Ordinance OC-7. Performance of a candidate in the Under-Graduate Course together with eligibility test, if any, shall be taken into consideration while preparing the merit list of students. Weightage for eligibility test/interview shall, however, not exceed 50%.

9. In case of all internal students i.e. students who have graduated from Colleges affiliated to or maintained by the University, the percentage of marks obtained in the subject concerned shall be raised by 10% on the aggregate.

In case of those candidates who have not offered the subject in Major/Honours

no such weight-age shall be given and their marks in the Major/Honours subject without weight-age shall be taken into account.”

The relevant portion of the Ordinance 7 i.e. OC-7 is quoted hereunder:-

**“NORTH-EASTERN HILL UNIVERSITY
ORDINANCES
ON THE MASTER’S DEGREE PROGRAMMES
IN ARTS, SCIENCE AND COMMERCE**

(Under Section 26(1)(b) of the NEHU Act, 1973)

“Ordinance OC-7

1. *The Master’s Degree Programmes in the Schools under the University are full time courses of study spread over a period of four academic Semesters or two academic years. These courses cannot be combined with any other full-time course or any part-time post-graduate course offered by the University except those which may be designed by the University for the post-graduate students of the University.*

2. i. *A candidate seeking admission to any of the courses must possess the qualifications prescribed by the Board of the School as approved by the Academic Council from time to time.*

ii. *Admissions to different courses shall be made only in the first semester at the beginning of each academic year unless specifically decided for a course by the Academic Council.*

iii. *Candidates who have taken the Bachelor’s Degree (Pass or Honours), of this University or any other recognized University shall be eligible to apply for admission to the courses offered by the Schools subject to provisions of the regulations relating to prerequisites if any. The minimum qualifying marks for admission to the different courses shall be as per regulation prescribed for the purpose.*

iv. *Admission to a course shall be made on the basis of the candidate’s performance at the admission test, if any, conducted by the concerned Department and/or*

her/his merit in the concerned subject at the undergraduate level.”

It is a clear cut case of the respondent-university in their affidavit-in-opposition that the calculation of the marks scored by the candidates in the admission test were not correctly made while preparing the provisional list of the selected candidates dated 13-08-2015 inasmuch as para 8 of the Ordinance prescribes that the weightage for eligibility test or interview shall not exceed 50% and under para 2(iv) of the Ordinance 7 admission to the course shall be made on the basis of the candidate's performance at the admission test, if any, conducted by the concerned Department and/or her/his merit in the concerned subject at the undergraduate level. Thus, accordingly, the revised list of the selected candidates dated 18-08-2015 had been prepared after correctly calculating the marks scored by the candidates in compliance with the provision of the NEHU Act, 1973 and the Ordinance 1 and Ordinance 7 of the University.

12. It is fairly settled law that if erroneous promotion is given by misreading the rules, the employer cannot be prevented from applying the rules accordingly in correcting the mistakes, it may cause hardship to the employee but the Court of law cannot ignore the statutory rules. The mistake committed by the authorities could be corrected by rightly applying the rules and regulations. The Apex Court in ***Indian Council of Agricultural Research and another vrs T.K.Suryanarayan and others (1997) 6 SCC 766*** para 8 held that:

“8.Even if in some cases erroneous promotions had been given contrary to the said Service Rules and consequently such employees have been allowed to enjoy the fruits of improper promotion, an employee cannot base his claim for promotion contrary to the statutory Service Rules in law courts. Incorrect promotion either given erroneously by the department by misreading the said Service Rules or such promotion given pursuant to judicial orders contrary to Service Rules cannot be a ground to claim erroneous promotion by perpetrating infringement of statutory Service Rules. In a court of law, employee cannot be permitted to contend that the Service Rules made effective on 1st October, 1975 should not be adhered to because in some case erroneous promotions had been given. The statutory Rules must be applied strictly in terms of the interpretation of Rules as indicated in the decision of Three Judge Bench of this Court in **Khetra Mohan's case**. [1994 Supp (3) SCC 595: 1995 SCC (L&S) 179: (1994) 28 ATC 588: Jt (1994) 6 SC 482]”

13. The Apex Court in **Hindustan Petroleum Corporation Ltd vrs Ashok Ranghba Ambre (2008) 2 SCC 717** para 21 held that:

“21. In the case on hand, according to the appellant-Corporation, the workman was appointed on a purely ad hoc and temporary basis, without following due process of law. His name was never sponsored by the Employment Exchange nor an advertisement was issued for the purpose of filling the post to which the writ petitioner was appointed. Cases of other similarly situated persons were not considered and the appointment was not legal and lawful. In industrial adjudication, an order of termination was quashed as it was not in accordance with law. But that did not mean that the workman had substantive right to hold the post. The High Court was, therefore, wrong in directing the Corporation to make the writ petitioner permanent and to extend him all benefits on that basis from 1992. The said direction, therefore, has to go.”

14. The Apex Court in ***Osmania University represented by its Registrar , Hyderabad, A.P. vrs Abdul Rayees Khan and Anr: (1997) 3 SCC 124*** held that the courts should be slow to interfere in academic selections made objectively by the expert after following the prescribed procedure. The matter of assessment for promotion of Reader in the University should be left to the Expert Body. Para 9 of the SCC in ***Osmania University's*** case (Supra) read as follows:

*“9. As held by this Court in **J.P Kulshrestha case : (1980) 3 SCC 418 ; 1980 SCC (L&S) 436** ultimately, this Court has to leave it to the academic body to select the best candidates suitable and fit to teach the subject. As held by this Court,*

“Rulings of this Court were cited before us to hammer home the point that the court should not substitute its judgment for that of academicians when the dispute relates to educational affairs. While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies. But University organs, for that matter any authority in our system, is bound by the rule of law and cannot be a law unto itself. If the Chancellor or any other authority lesser in level decides an academic matter, or an educational question, the court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the court out”

In view of the above settled law, with which I am in respectful agreement I hold that generally the court may not interfere with the matter relating to educational affairs, and that academic matters may be left to the expert body to select best of the talent on objective criteria. What is the objective criteria is a question of fact in each case. Each case depends upon its own facts and the circumstances in which the respective claims of

competing candidates have come up for consideration. No absolute rule in that behalf could be laid. Each case requires to be considered on its own merit and in its own setting, giving due consideration to the views expressed by the educational experts in the affairs of their administration or selection of the candidates.”

15. The Apex Court in ***Secretary and Curator, Victoria Memorial Hall vrs Howrah Ganatantrik Nagrik Samity and Ors: (2010) 3 SCC 732*** held that the recommendation of the expert body should not have been turned down in the absence of any contrary provision in the relevant Act. Para 37 and 38 of the SCC in ***Secretary and Curator, Victoria Memorial Hall's*** case (Supra) read as follows:

“37. The Constitution Bench of this Court in ***University of Mysore v. C.D. Govinda Rao: AIR 1976 SC 491*** held that (AIR p. 496, para 13) “normally the courts should be slow to interfere with the opinions expressed by the experts”. It would normally be wise and safe for the courts to leave the decision to experts who are more familiar with the problems they face that the courts generally can be. This view has consistently been reiterated by this Court as is evident from the judgments in ***State of Bihar v. Dr. Asis Kumar Mukherjee: (1975) 3 SCC 602: 1975 SCC (L&S) 51: AIR 1975 SC 192, Dalpat Abasaheb Solunke v. Dr. B.S. Mahajan: (1990) 1 SCC 305: 1990 SCC (L&S) 80: (1991) 16 ATC 528: AIR 1990 SC 434, Central Areca Nut & Cocoa Mktg. & Processing Coop. Ltd. v. State of Karnataka: (1997) 8 SCC 31 and Dental Council of India v. Subharti K.K.B. Charitable Trust : (2001) 5 SCC 486.***

38. However, if the provision of law is to be read or understood or interpreted, the court has to play an important role. ***(P.M. Bhargava v. UGC: (2004) 6 SCC 661: AIR 2004 SC 3478 and Rajbir Singh Dalal (Dr.) v. Chaudhari Devi Lal University: (2008) 9 SCC 284: (2008) 2 SCC (L&S) 887.***”

16. It is well settled that when a selection is made by the Expert Body like the Public Service Commission which was also advised by the Expert, the Court should be slow to interfere with the opinion expressed by the Expert unless allegations of mala fide are made and established. The Apex Court in **Secy. (Health) Deptt. of Health & F.W. and Anr vrs Dr. Anita Puri and Ors: (1996) 6 SCC 282** para 9 held that:

“9.We are unable to accept this contention. This Court in the case of **Ajay Hasia v. Khalid Majib Sehravardi (1981) 1 SCC 722: 1981 SCC (L & S) 258**, while considering the Case of selection, wherein 33% marks was the minimum requirement by a candidate in viva voce for being selected, held that it does not incur any constitutional infirmity. As has been stated earlier the expert body has to evolve some procedure for assessing the merit and suitability of the applicants and the same necessarily has to be made only by allotting marks on different facets and then awarding marks in respect of each facet of a candidate and finally evaluating his merit, it is too well settled that when a Selection is made by an expert body like public Service Commission which is also advised by experts having technical experience and high academic qualification in the field for which the selection is to be made, the courts should be slow to interfere with the opinion expressed by experts unless allegations of mala fide are made and established. It would be prudent and safe for the courts to leave the decisions on such matters to the experts who are more familiar with the problems they face than the courts. If the expert body considers suitability of a candidate for a specified post after giving due consideration to all the relevant factors, then the court should not ordinarily interfere with such selection and evaluation. Thus considered, we are not in a position to agree with the conclusion of the High Court that the marks awarded by the Commission was arbitrary or that the selection made by the Commission was in any way vitiated.”

17. If an order is bad in its inception, it does not get sanctified at a later stage. The Apex Court in ***State of Orissa and another vrs Mamata Mohanty (2011) 3 SCC 436*** held that:

*“37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (vide: ***Upen Chandra Gogoi v. State of Assam: (1998) 3 SCC 381 : 1998 SCC (L&S) 872: AIR 1998 SC 1289;****

Mangal Prasad Tamoli v. Narvadeshwar Mishra: (2005) 3 SCC 422: AIR 2005 SC 1964;

and Ritesh Tiwari v. State of U.P: (2010) 10 SCC 677: (2010) 4 SCC (Civ) 315: AIR 2010 SC 3823).

18. In the present case, setting aside of the revised select list dated 18-08-2015 will result to revival of the earlier provisional list of selected candidates dated 13-08-2015 which was based on wrong calculation of the marks obtained by the applicants in the entrance/admission test held on 11-08-2015. The Apex Court in ***Osmania University’s*** case (Supra), ***Secretary and Curator, Victoria Memorial Hall’s*** case (Supra) and ***Secretary (Health) Department of Health and Family Welfare’s*** case (Supra) held that the Courts should be slow to interfere with the opinion of the expert unless allegation of malafide are made and established. In

the given case, no allegation of malafide and bias against the authority or member of the admission committee which was constituted by the NEHU for the Political Science Department had been made nor had the petitioners attempt to establish bias and malafide against a member of the admission committee or the authority of the university except that no reason had been given for issuing the revised select list dated 18-08-2015 by superseding the earlier provisional select list dated 13-08-2015. This Court has no expertise in the academic matters or the selection of the candidates for admission to M.A. programme in Political Science in NEHU. The expert committee of the university i.e. NEHU had accepted the admission test conducted by the expert i.e. the admission committee and after such acceptance, the revised merit list of selected candidates dated 18-08-2015 was published. The selected candidates had already been admitted to M.A Programme in Political Science for the academic session 2015-2017. The Apex Court in ***Bhartiya Seva Samaj Trust and another vrs Yogeshbhai Ambalal Patel and another (2012) 9 SCC 310*** held that if the party had committed a wrong, he cannot be permitted to take benefit of his own wrong and also that the Courts should not set aside that which appear to be illegal if its effect is to revive another illegal order. It is for the reason that in such eventuality the illegal would perpetuate and it would be a premium to the undeserving party/persons. Para 14 and 28 of the SCC in ***Bharitya Seva Samaj Trust's*** case (Supra) read as follows:

“14. It is a settled legal proposition that the court should not set aside the order which appears to be illegal, if its effect is to revive

another illegal order. It is for the reason that in such an eventuality the illegality would perpetuate and it would put a premium to the undeserving party/person. **(Vide:Gadde Venkateswara Rao v. Government of A.P : AIR 1966 SC 828; Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar : (1999) 8 SCC 16; AIR 1999 SC 3609; Mallikarjuna Mudhagal Nagappa v. State of Karnataka: (2000) 7 SCC 238 : AIR 2000 SC 2976; Chandra Singh v. State of Rajasthan: (2003) 6 SCC 545 : 2003 SCC (L&S) 951 : AIR 2003 SC 2889; and State of Uttaranchal v. Ajit Singh Bhola (2004) 6 SCC 800).**

28. A person alleging his own infamy cannot be heard at any forum, what to talk of a Writ Court, as explained by the legal maxim allegans suam turpitudinem non est audiendus. If a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong. **[Vide: G. S. Lamba. v. Union of India (1985) 2 SCC 604 : 1985 SCC (L&S) 491 : AIR 1985 SC 1019, Narender Chadha v. Union of India: (1986) 2 SCC 157 : 1986 SCC (L&S) 226, Molly Joseph v. George Sebastian: (1996) 6 SCC 337 : AIR 1997 SC 109, Jose v. Alice : (1996) 6 SCC 337 at 342 (connected case) and T. Srinivasan v. T. Varalakshmi Mrs, (1998) 3 SCC 112.] This concept is also explained by the legal maxims Commodum ex injuria sua non habere debet and nullus commodum capere potest de injuria sua propria. (See also: Eureka Forbes Ltd. v. Allahabad Bank: (2010) 6 SCC 193: (2010) 2 SCC (Civ) 627 and Inderjit Singh Grewal v. State of Punjab (2011) 12 SCC 588: (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614”**

19. Merely because names of the candidates were included in the provisional select list, they do not acquire any right for appointment even against existing vacancies. In the present case, merely because the names of the petitioners were included in the provisional list dated 13-08-2015, they do not acquire any right for admission to M.A. Programme in Political Science for the

academic session 2015-2017 of NEHU. The Apex Court in ***All India SC & ST Employees Association and another vrs A. Arthur Jeen and Others (2001) 6 SCC 380*** para 10 held that:

*“10. Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in **Shankarsan Dash v. Union of India (1991) 3 SCC 47: 1991 SCC (L&S) 800: (1991) 17 ATC 95. Para 7 of the said judgment reads thus: (SCC pp. 50-51).....”***

20. No doubt the Court has sympathy for the writ petitioners for the lost of their chance for admission to M.A. Programme/Course in Political Science for the academic session 2015-2017 in any other universities, but the law is so well settled that sentiment and sympathy cannot be the ground for departing from law. The Apex Court in ***Uttar Haryana Bijli Vitran Nigam Ltd and others vs Surji Devi (2008) 2 SCC 310*** para 16 held that:

“16 The scheme relating to grant of Family Pension was made under a statute. A person would be entitled to the benefit thereof subject to the statutory interdicts. From a bare perusal of the provisions contained in the Punjab Civil Services Rules, Volume 2 vis-a-vis the Family Pension Scheme, it would be evident that the respondent was not entitled to the grant of any family pension. The husband of the respondent was a work-charge employee. His services had never been regularized. It may be unfortunate that he had worked for 11 years. He expired before he could get the benefit of the regularization scheme but sentiments and sympathy alone cannot be a ground for taking a

view different from what is permissible in law.
 [See **Maruti Udyod Ltd. v. Ram Lal** (2005) 2 SCC 638: 2005 SCC (L&S) 308, **State of Bihar v. Amrendra Kumar Mishra**: (2006) 12 SCC 561: (2007) 2 SCC (L&S) 132: (2006) 9 Scale 549 **SBI v. Mahatma Mishra**: (2006) 13 SCC 727: (2006) 11 Scale 258, **State of Karnataka v. Ameerbi** : (2007) 11 SCC 681: (2006) 13 Scale 319 and **State of M.P. v. Sanjay Kumar Pathak**: (2008) 1 SCC 456: (2007) 12 Scale 72]

21. The Apex Court in **Kendriya Vidyalaya Sangathan and others vrs Ajay Kumar Das and others** (2002) 4 SCC 503 held that if an appointment order is a nullity, the question of observation of rules of natural justice would not arise. Para 5 of the SCC in **Kendriya Vidyalaya Sangathan's** case (Supra) read as follows:

“5. The narration of the facts made above, make it clear that the respondents were appointed by the said Dr. K.C.Rakesh, Assistant Commissioner, Guwahati when his services had been terminated and his continuation in service itself was under a cloud and in an inquiry serious lapses had been noticed in the matter of recruitment. It is clear that if after the termination of services of the said Dr. K.C.Rakesh, the orders of appointment are issued, such orders are not valid. If such appointment orders are a nullity, the question of observance of principles of natural justice would not arise.....”

22. For the foregoing reasons and discussions, this Court is of the considered view that this writ petition is devoid of merit. However, in the peculiar circumstances of the case that the petitioners had suffered mental agony and lost one valuable

academic year because of the bonafide inadvertence committed by the admission committee in calculating the marks scored by the petitioners in the admission test held on 11-08-2015, this Court is of the considered view that some cost should be awarded to the respondents No. 1 and 2 for giving as a balm to the mental agony suffered by the writ petitioners. Accordingly, a cost of ₹ 12,000/- (Rupees twelve thousand) only is imposed to the respondents No. 1 and 2. The respondents No. 1 and 2 shall deposit the cost of ₹ 12,000/- (Rupees twelve thousand) only in the registry of this High Court within 2(two) weeks from the date of receipt of the certified copy of this judgment and order. Registry inturn shall release the said cost to the writ petitioners on proper identification by their counsel.

23. Writ petition is dismissed with the above conditions.

JUDGE

S.Rynjah