***Before Ravi Shankar Jha, CJ & Arun Palli, J.***

**MANISH AND OTHERS**—*Petitioners*

*versus*

**LALA LAJPAT RAI UNIVERSITY OF VETERINARY AND ANIMAL SCIENCES, HISAR AND OTHERS**—*Respondents*

**CWP No.268 of 2020**

January 15, 2020

***Constitution of India, 1950—Art. 226—Relief cannot be granted on principle of negative equality—Petitioner removed from college as per rule 12 by failing to clear first year of diploma course in 2 years—Challenged by claiming parity with another student who has availed seven opportunities—Held, Court cannot direct an authority to act in contravention of their own rules—Further, negative equality when the right does not exit cannot be claimed—Petition dismissed.***

*Held that* in the teeth of the Rules, no direction can be issued to the respondent-authorities to permit the petitioners to appear in the examination as, in fact, that would amount to issuing a direction to the University and Colleges to violate their own Rules, which is not permissible as has been held by the Supreme Court in the case of *Maharishi Dayanand University v. Surjeet Kaur, (2010) 11 SCC 159.* Para nos. 10 to 17 read as under:-

> "10. The Court has no competence to issue a direction contrary to law nor can the Court direct an authority to act in contravention of statutory provisions. In State of Punjab & Ors. v. Renuka Singla & Ors., (1994) 1SCC 175, dealing with a similar situation, this Court observed as under:-
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> "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....."
>
> (Para 9)

*Held that,* the petitioners cannot be permitted to seek relief or be granted relief on the principle of negative equality and, therefore, the benefit and parity claimed by the petitioners with one Aman, who has

been granted more chances than those permitted under the Rules, cannot be considered or allowed in view of the decision of the Supreme Court in ***State of Odisha & Another v. Anup Kumar Senapati & Another, 2019 (12) Scale 387,*** wherein it has been held as under in para no.30:-

> "30. It was lastly submitted that concerning other persons, the orders have been passed by the Tribunal, which was affirmed by the High Court and grants-in-aid has been released under the Order of 1994 as such on the ground of parity this Court should not interfere. No doubt, there had been a divergence of opinion on the aforesaid issue. Be that as it may. In our opinion, there is no concept of negative equality under Article 14 of the Constitution. In case the person has a right, he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the right does not exist, negative equality when the right does not exist, cannot be claimed. In **Basawaraj and another v. Special Land Acquisition Officer, (2013) 14 SCC 81,** it was held thus:
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> "8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit

Singh, (1995) 1 SCC 745, Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164, K.K. Bhalla v. State of M.P., (2006) 3 SCC 481 and Fujit Kaur v. State of Punjab, (2010) 11 SCC 455.)"

(Para 10)

*Further held that,* while dismissing the petition, we are constrained to observe and make it clear that the University and the Colleges are required to strictly adhere to the Rules so as to inspire confidence in the procedure prescribed by law and the rules and therefore, the University and Colleges should make sure that they comply with and follow the Rules and Regulations of the University and other authorities.

(Para 13)

Chand Ram Olla, Advocate
*for the petitioners.*

**RAVI SHANKER JHA, CHIEF JUSTICE oral**

CM-441-CWP-2020

(1) For the reasons mentioned in the application, Annexure A-1 is taken on record.

(2) Application stands disposed of.

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(3) The petitioners have filed this petition being aggrieved by communication dated 13.12.2019 by which the names of the petitioners have been removed from the rolls of the college as the petitioners have failed to clear the first year of Veterniary and Livestock Development Diploma Course in two years.

(4) The learned counsel appearing for the petitioners submits that the University has permitted one student, namely, Aman having Roll No. 12 VLD 044 of 2012-2013 Academic Sessions, seven opportunities, out of which, five were for clearing the second year of the Diploma Course. Learned counsel for the petitioners submits that the respondent-authorities have adopted a discriminatory attitude and have subjected the petitioners to victimization as on the one hand, they have permitted seven attempts to one student, but have denied more than two attempts to the petitioners to clear the first year course.

(5) We have heard learned counsel for the petitioners at length.

(6) We have also perused the Rules and Regulations governing Diploma Courses issued by the Institute of Para Veterinary Sciences Lala Lajpat Rai University of Veterinary and Animal Sciences, Hisar, which have been placed on record by the petitioners, vide CM-441-CWP-2020. Rule 12 of the said Rules reads as under:-

> **"12. Residential Requirements**
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> A student will be allowed a maximum of two years to clear/pass a class after which his/her name will be removed from the college rolls by the Director, Institute of Para Veterinary Sciences. The missed examinations, due to any reason, will be treated as one of the attempts. The total residential requirement for the diploma course will not exceed four years in any case."

(7) From a perusal of the aforesaid Rule, it is evident that a student is allowed a maximum of two years to clear/pass a class after which his/her name will be removed from the college rolls. Admittedly, the petitioners have not been able to clear the first year diploma course in two years and the authorities in exercise of powers under Rule 12 have passed the impugned order dated 13.12.2019 striking out the names of the petitioners from the rolls of the college.

(8) From a perusal of the Rules and facts, it is evident that the order passed by the respondent-authorities is in accordance with the rules and the law and thus, does not suffer from any illegality warranting interference.

(9) We are also of the considered opinion that in the teeth of the Rules, no direction can be issued to the respondent-authorities to permit the petitioners to appear in the examination as, in fact, that would amount to issuing a direction to the University and Colleges to violate their own Rules, which is not permissible as has been held by the Supreme Court in the case of ***Maharshi Dayanand University*** versus ***Surjeet Kaur***[1]. Para nos. 10 to 17 read as under:-

> "10. The Court has no competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention of statutory provisions. In ***State of Punjab & Ors. v. Renuka Singla & Ors.,*** **(1994) 1 SCC 175**, dealing with a similar situation, this Court observed as under:-

[1] (2010) 11 SCC 159

"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 "

11. Similarly, in ***Karnataka State Road Transport Corporation v. Ashrafulla Khan & Ors.*, 2002(1) RCR (Civil) 768,** this Court held as under:-

"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."

12. Similar view has been reiterated by this Court in ***Manish Goel Vs. Rohini Goel, 2010 (2) RCR (Civil) 194* : 2010 (1) R.A.J. 707.**

13. It is worth noting that the respondent at the time of filling up of her form for B.Ed. course at the first instance had not made any disclosure about her pursuit of post-graduate student in Political Science.

14. The Notification dated 16.3.1998 read as under:-

"It is notified that the University has granted last mercy chance to the candidates of Under- graduate (Under Pattern 10+2+3) as well as post-graduate examination (s) (Annual system after discontinuation of Semester system) except MBBS/BDS/MD/PG Diplomas Courses, who could not clear their re-appear paper (s) within stipulated chances and have been declared as fail and those who could not pass/complete the degree within the stipulated period e.g. within six years of Under-graduate and four years for post-graduate courses, as per the latest syllabi. The examination fee will be Rs. 1,000/-."

15. A bare perusal of the same would demonstrably make it clear that the said provision was not meant for candidates like the respondent. As a matter of fact, under the garb of the said Notification, the respondent managed to get her form registered with the appellant and when this discrepancy was discovered, the appellant chose to set it right which in our opinion was perfectly justified. The respondent cannot plead any estoppel either by conduct or against a Statute so as to gain any advantage of the fact that she was allowed to appear in the

examination.

16. In ***Union Territory, Chandigarh, Admn. & Ors. v.. Managing Society, Goswami, GDSDC, 1996 (1) R.R.R. 649: (1996) 7 SCC 665***, this Court considered the case under the provisions of the Punjab (Development and Regulation) Act, 1952, wherein a demand had been challenged on the ground of equitable estoppel. This Court held that promissory estoppel does not apply against the Statute. Therefore, the authority had a right to make recovery of outstanding dues in accordance with law. The Court held as under :-

"(The Administration) only corrected a patent mistake which could not be permitted to subsist.....A contract in violation of the mandatory provisions of law can only be read and enforced in terms of the law and in no other way. The question of equitable estoppel does not arise in this case because there can be no estoppel against a statute."

17. There can be no estoppel/promissory estoppel against the Legislature in the exercise of the legislative function nor can the Government or public authority be debarred from enforcing a statutory prohibition. Promissory estoppel being an equitable doctrine, must yield when the equity so requires. (vide ***Dr. H.S. Rikhy etc. v. The New Delhi Municipal Committee, AIR 1962 Supreme Court 554; M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu & Ors., (1999) 6 SCC 464; Shish Ram &*** *Ors*. v. State of Haryana & Ors., 2000 (3) RCR (Civil) 279 : (2000) 6 SCC 84; Chandra Prakash Tiwari & Ors. v. Shakuntala Shukla & Ors., 2002(2) S.C.T. 1093 : (2002) 6 SCC 127; I.T.C. Ltd. v. Person Incharge, ***AMC, Kakinada & Ors., AIR 2004 Supreme Court 1796; State of U.P. & Anr. v. Uttar Pradesh Rajya Khanij Vikas Nigam Sangharsh Samiti & Ors., (2008) 12 SCC 675; and Sneh Gupta v. Devi Sarup & Ors., 2009(2) RCR (Civil) 129 : 2009(2) R.A.J. 145 : (2009) 6 SCC 194).”***

(10) We are also of the considered opinion that the petitioners cannot be permitted to seek relief or be granted relief on the principle of negative equality and, therefore, the benefit and parity claimed by the petitioners with one Aman, who has been granted more chances than those permitted under the Rules, cannot be considered or allowed in view of the decision of the Supreme Court in ***State of Odisha &***

***Another*** versus ***Anup Kumar Senapati & Another***[2]**,** wherein it has been held as under in para no.30:-

> "30. It was lastly submitted that concerning other persons, the orders have been passed by the Tribunal, which was affirmed by the High Court and grants-in-aid has been released under the Order of 1994 as such on the ground of parity this Court should not interfere. No doubt, there had been a divergence of opinion on the aforesaid issue. Be that as it may. In our opinion, there is no concept of negative equality under Article 14 of the Constitution. In case the person has a right, he has to be treated equally, but where right is not available a person cannot claim rights to be treated equally as the right does not exist, negative equality when the right does not exist, cannot be claimed. In ***Basawaraj and another v. Special Land Acquisition Officer, (2013) 14 SCC 81,*** it was held thus:
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> "8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide

[2] 2019 (12) Scale 387

***Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745, Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164, K.K. Bhalla v. State of M.P., (2006) 3 SCC 481 and Fujit Kaur v. State of Punjab, (2010) 11 SCC 455.)"***

In **Chatman Lal v. State of Punjab and others, (2014) 15 SCC 715,** it was observed as under:

"16. More so, it is also settled legal proposition that Article 14 does not envisage for negative equality. In case a wrong benefit has been conferred upon someone inadvertently or otherwise, it may not be a ground to grant similar relief to others. This Court in ***Basawaraj v. Land Acquisition Officer,*** **(2013) 14 SCC 81** considered this issue and held as under: (SCC p. 85, para 8)

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide ***Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745, Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164, K.K. Bhalla v. State of M.P., (2006) 3 SCC 481 and Fujit Kaur v. State of Punjab, (2010) 11 SCC 455.)"***

In ***Fuljit Kaur v. State of Punjab and others,*** **(2010) 11**

**SCC 455**, it was observed thus:

"11. The respondent cannot claim parity with **D.*S. Laungia v. State of Punjab,* AIR 1993 P&H 54,** in view of the settled legal proposition that Article 14 of the Constitution of India does not envisage negative equality. Article 14 is not meant to perpetuate illegality or fraud. Article 14 of the Constitution has a positive concept. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim the benefits on the basis of the wrong decision. Even otherwise Article 14 cannot be stretched too far otherwise it would make function of the administration impossible. (Vide ***Coromandel Fertilizers Ltd. v. Union of India, 1984 Supp SCC 457, Panchi Devi v. State ofRajasthan, (2009) 2 SCC 589*** *and* ***Shanti Sports Club v. Union of India, (2009) 15 SCC 705)"***

*In* ***Doiwala Sehkari Shram Samvida Samiti Ltd. v. State of Uttaranchal and others, (2007) 11 SCC 641,*** this Court in the context of negative equality observed thus:

"28. This Court in **Union of India v. International Trading Co.** has held that two wrongs do not make one right. The appellant cannot claim that since something wrong has been done in another case, directions should be given for doing another wrong. It would not be setting a wrong right but could be perpetuating another wrong and in such matters, there is no discrimination involved. The concept of equal treatment on the logic of Article 14 cannot be pressed into service in such cases. But the concept of equal treatment presupposes existence of similar legal foothold. It does not countenance repetition of a wrong action to bring wrongs on a par. The affected parties have to establish strength of their case on some other basis and not by claiming negative quality. In view of the law laid down

by this Court in the above matter, the submission of the appellant has no force. In case, some of the persons have been granted permits wrongly, the appellant cannot claim the benefit of the wrong done by the Government."

In ***Bondu Ramaswamy and others v. Bangalore Development Authority and others, (2010) 7 SCC 129***, this Court observed thus:

"146. If the rules/scheme/policy provides for deletion of certain categories of land and if the petitioner falls under those categories, he will be entitled to relief. But if under the rules or scheme or policy for deletion, his land is not eligible for deletion, his land cannot be deleted merely on the ground that some other land similarly situated had been deleted (even though that land also did not fall under any category eligible to be deleted), as that would amount to enforcing negative equality. But where large extents of land of others are indiscriminately and arbitrarily deleted, then the court may grant relief, if, on account of such deletions, the development scheme for that area has become inexecutable or has resulted in abandonment of the scheme."

In ***Kulwinder Pal Singh and another v. State of Punjab and others, (2016) 6 SCC 532***, *this Court while relying upon* ***State of U.P. v. Rajkumar Sharma,*** **(2006) 3 SCC 330**, observed as under:

"16. The learned counsel for the appellants contended that when the other candidates were appointed in the post against dereserved category, the same benefit should also be extended to the appellants. Article 14 of the Constitution of India is not to perpetuate illegality and it does not envisage negative equalities. In **State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 330** it was held as under (SCC p. 337, para 15)

"15. Even if in some cases appointments have been made by mistake or wrongly, that does not confer any right on another person. Article 14 of the Constitution does not envisage negative equality, and if the State committed the mistake it cannot be forced to perpetuate the same mistake. (See ***Sneh Prabha v. State of U.P. (1996) 7 SCC 426; Jaipur Development Authority v. Daulat Mal Jain (1997)***

***1 SCC 35; State of Haryana v. Ram Kumar Mann (1997) 3 SCC 321; Faridabad CT Scan Centre v. DG, Health Services, (1997) 7 SCC 752; Jalandhar Improvement Trust v. Sampuran Singh, (1999) 3 SCC 494; State of Punjab v. Rajeev Sarwal, (1999) 9 SCC 240; Yogesh Kumar v. Govt. (NCT of Delhi), (2003) 3 SCC 548; Union of India v. International Trading Co., (2003) 5 SCC 437 and Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit v. Indore Development Authority, (2006) 2 SCC 604.)***" Merely because some persons have been granted benefit illegally or by mistake, it does not confer right upon the appellants to claim equality."

In **Rajasthan State Industrial Development & Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and others, (2013) 5 SCC 427**, this Court held as under:

"19. Even if the lands of other similarly situated persons have been released, the Society must satisfy the Court that it is similarly situated in all respects, and has an independent right to get the land released. Article 14 of the Constitution does not envisage negative equality, and it cannot be used to perpetuate any illegality. The doctrine of discrimination based upon the existence of an enforceable right, and Article 14 would hence apply, only when invidious discrimination is meted out to equals, similarly circumstanced without any rational basis, or to relationship that would warrant such discrimination. [Vide ***Sneh Prabha v. State of U.P., (1996) 7 SCC 426, Yogesh Kumar v. Govt. (NCT of Delhi), (2003) 3 SCC 548, State of W.B. v. Debasish Mukherjee, (2011) 14 SCC 187 and Priya Gupta v. State of Chhattisgarh, (2012) 7 SCC 433.]"***

***In Arup Das and others v. State of Assam and others, (2012) 5 SCC 559***, this Court observed as under:

"19. In a recent decision rendered by this Court in **State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 330**, this Court once again had to consider the question of filling up of vacancies over and above the number of vacancies advertised. Referring to the various decisions rendered on this issue, this Court held that filling up of vacancies over and above the number of vacancies advertised would be

violative of the fundamental rights guaranteed under Articles 14 and 16 of the Constitution and that selectees could not claim appointments as a matter of right. It was reiterated that mere inclusion of candidates in the select list does not confer any right to be selected, even if some of the vacancies remained unfilled. This Court went on to observe further that even if in some cases appointments had been made by mistake or wrongly, that did not confer any right of appointment to another person, as Article 14 of the Constitution does not envisage negative equality and if the State had committed a mistake, it cannot be forced to perpetuate the said mistake."

In ***State of Orissa and another v. Mamata Mohanty*, (2011) 3 SCC 436**, it was observed:

"56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (Vide ***Chandigarh Admn. v. Jagjit Singh, (1995) 1 SCC 745, Yogesh Kumar v. Govt. of NCT of Delhi, (2003) 3 SCC 548, Anand Buttons Ltd. v. State of Haryana, (2005) 9 SCC 164, K.K. Bhalla v. State of M.P., (2006) 3 SCC 581, Krishan Bhatt v. State of J & K, (2008) 9 SCC 24, State of Bihar v. Upendra Narayan Singh, (2009) 5 SCC 65*** *and* ***Union of India v. Kartck Chandra Mondal, (2010) 2 SCC 422)"***

(11) In the circumstances, we do not find any perversity or illegality in the impugned order passed by the respondent-authorities.

(12) The petition filed by the petitioners being meritless is, accordingly, dismissed.

(13) While dismissing the petition, we are constrained to observe and make it clear that the University and the Colleges are required to strictly adhere to the Rules so as to inspire confidence in the procedure prescribed by law and the rules and therefore, the University and Colleges should make sure that they comply with and follow the Rules and Regulations of the University and other authorities.