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**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Reserved For Order on : 30.10.2023**

**Order Passed on : 24/11/2023**

**WPC No. 2086 of 2023**

1. Sagar Sahu, S/o. Umesh Kumar Sahu, Aged About 19 Years, R/o. House No. 22/930, Mandi Gate Road, Pragati Maidaan Pandri Raipur, Chhattisgarh
2. Bhawesh Sinha, S/o. D. P. Sinha, Aged About 19 Years R/o Near Shweta Aatachakki, Gandhi Chowk, Telibandha Raipur, Chhattisgarh.
3. Kirtan Sonpipre, S/o. Neerakar Sonpipre, Aged About 20 Years, House No. 23/335, Near Sakti Mata Mandir Shankar Nagar Raipur, Chhattisgarh
4. Himani Singh Rajput, S/o. Pradeep Singh Rajput Aged About 18 Years, R/o 102, Harshit Nagar, Tatibandh Raipur, District : Raipur, Chhattisgarh
5. Nikhil Saytode, S/o. Laxmi Narayan Saytode, Aged About 21 Years, R/o D-13/2, Sector-3, Vidya Society, Tatibandh Raipur, District : Raipur, Chhattisgarh
6. Akshat Pandey S/o Tomeshwar Pandey Aged About 19 Years R/o Chota Bhawani Nagar, Kota Raipur, Chhattisgarh
7. Sachin Kumar Pathak S/o Shivakant Pathak Aged About 18 Years, R/o Sakti Pata Urkura, Raipur, Chhattisgarh
8. Deepak Verma S/o Dhaneshwar Verma Aged About 18 Years R/o Gandhi Chowk, Palari Balodabazar, District : Balodabazar-Bhathapara, Chhattisgarh

---- **Petitioners**

**Versus**

- 1- Government Nagarjuna Post Graduate College Of Science, Through Its Principal G. E. Road Raipur, District : Raipur, Chhattisgarh



2- Pt. Ravishankar Shukla University, Through Its Registrar Amanaka G. E. Road Raipur, Chhattisgarh

3- State Of Chhattisgarh, Through Its Special Secretary Department Of Higher Education, Mahanadi Bhawan, Nava Raipur Atal Nagar Raipur, District : Raipur, Chhattisgarh

-----Respondents

**WPC No. 2835 of 2023**

1 - Ayush Pradhan S/o Sanjay Pradhan Aged About 19 Years R/o Saldih, Block- Pithora, District : Mahasamund, Chhattisgarh

2 - Vaibhav Toppo S/o Ajay Dan Toppo Aged About 21 Years R/o Isha Naya Jagatpur, Raigarh, District : Raigarh, Chhattisgarh

3 - Preeti Sahu D/o Rambihari Sahu Aged About 20 Years R/o Village And Post - Tendua, District : Raipur, Chhattisgarh

4 - Karina Bhoi D/o Rupanand Bhoi Aged About 19 Years R/o - Chikhli, Pithora, District : Mahasamund, Chhattisgarh

5- Savita D/o Rimayan Singh Aged About 19 Years R/o Village- Kharhari, Post- Mainpur, District : Gariyabandh, Chhattisgarh

6- Namish Bhoi S/o Jalandhar Kumar Bhoi Aged About 19 Years, R/o Teachers Colony, Aamdih, District : Gariyabandh, Chhattisgarh

7- Janak Verma S/o Ramjeet Verma Aged About 20 Years R/o Sondongri, Raipur, District : Raipur, Chhattisgarh

8- Vivek Nirmalkar S/o Omprakash Nirmalkar Aged About 20 Years R/o Village- Birgaon, Post- Paktiya, District : Gariyabandh, Chhattisgarh

9- Kirti Nishad D/o Ramswarup Nishad Aged About 19 Years R/o Godawari Nagar, Boriyakhurd, Raipur, District : Raipur, Chhattisgarh

10- Mahrunisha D/o Sayyad Julfkar Ali Aged About 18 Years R/o Gajinagar, Birgaon, District- Raipur, Chhattigarh.

11- Khugesh Kumar Banjare S/o Mangal Chand Banjare Aged About 18 Years R/o Sarkhor, Post- Sarkhor, Balodabazar, District : Balodabazar-Bhathapara, Chhattisgarh





---- Petitioners

**Versus**

- 1- Government Nagarjuna Post Graduate College Of Science Through Its Principal G.E. Road, Raipur, Chhattisgarh.
- 2- Pt. Ravishankar Shukla University, Through Its Registrar Amanaka, G.E. Road, District : Raipur, Chhattisgarh
- 3- State Of Chhattisgarh, Through Its Special Secretary, Department Of Higher Education, Mahanadi Bhawan, Nava Raipur, Atal Nagar, Chhattisgarh

---- Respondents

**AND**

**WPC No. 2305 of 2023**

- 1- Poshan Sahu S/o Santosh Sahu Aged About 20 Years R/o Ward No. 2, Matka Bemetara, District Bemetara (C.G.)
- 2- Harsh Verma S/o Dhanesh Verma Aged About 19 Years R/o House No. 54, Ward No. 1, Bhilauri, Tilda, District Raipur (C.G.)
- 3- Jahnvi Verma D/o Khemnarayan Verma Aged About 19 Years R/o House No. 75, Krishna Nagar Colony, Bajrang Ward, Tilda Nevra, District Raipur (C.G.)
- 4- Soumya Sinha S/o Ramkumar Sinha Aged About 18 Years R/o Bharatmata Chowk, Ward No. 26, Kawardha, District Kabirdham (C.G.)
- 5- Kumkum Sahu D/o Radhelal Sahu Aged About 18 Years R/o Akolikala, District (C.G.)
- 6- Muskan Bhardwaj D/o Madho Singh Bhardwaj Aged About 18 Years R/o Kanhapur, Post Koma, District Mahasamund (C.G.)
- 7- Mehul Verma S/o Deendayal Verma Aged About 19 Years R/o Nakti (Vishrampur), Post Tulsi (Manpur), Tahsil Tilda, District Raipur (C.G.)
- 8- Narendra Yadav S/o Dileshwar Prasad Yadav Aged About 18 Years R/o Raipur, District Raipur (C.G.)
- 9- C.L. Himanshu Tandiya S/o Chhabilal Tandiya Aged About 18 Years, R/o Ward No. 10, Narharpur, District Kanker (C.G.)



10- Vasundhara D/o Rajendra Aged About 18 Years  
R/o 125 Indra Awas Para, Village Kathiya, Post Kathiya, District Raipur (C.G.)

11- Poonam Yadav D/o Shivprasad Yadav Aged About 19 Years  
R/o Mohba Bazar, Dumar Talab, Raipur, District Raipur (C.G.)

12- Minakshi Verma D/o Ashok Verma Aged About 18 Years  
R/o Housing Board Colony, Kohka, Tilda Nevra, District Raipur (C.G.)

13- Ritik S/o Prakash Tembhone Aged About 21 Years  
R/o Laxmi Nagar, Gudhiyari, Raipur, District Raipur (C.G.)

14- Hardika Gautam D/o Rakesh Gautam Aged About 18 Years  
R/o Deendayal Upadhyay Nagar, Raipur, District Raipur (C.G.)

---- **Petitioners**

**Versus**

1- Government Nagarjuna Post Graduate College Of Science  
Through Its Principal G.E. Road, Raipur (C.G.)

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3- State Of Chhattisgarh, Through Its Special Secretary,  
Department Of Higher Education Mahanadi Bhawan Nava Raipur  
Atal Nagar (C.G.)

---- **Respondents**

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For Petitioners : Mr. Goutam Khetrapal, Advocate

For Respondents/State No.1 & 3 : Mr. Amrito Das, Addl. Advocate General

For Respondents No.2/University : Mr. Raghavendra Pradhan, Advocate  
(In WPC No. 2086 & 2305 of 2023)

For Respondents No.2/University : Mr. Neeraj Choubey, Advocate  
(In WPC No. 2835 of 2023)

For Intervenors : Mr. J.K. Gupta, Advocate  
(in WPC. No. 2305 of 2023)

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**Hon'ble Shri Justice Parth Prateem Sahu**

**C A V ORDER**

1. As in all the three writ petitions, common questions are involved, therefore, they are being decided by this common order.
2. Petitioners have filed these writ petitions against the impugned notice dated 17.04.2023 and 26.04.2023 (Annexure P-4 & P-5) issued by respondent No.1 and also sought issuance of direction to the respondents to give impugned Ordinance No.197 dated 11.01.2023 prospective effect, whereby the minimum passing marks in semester exams have been enhanced to 40% instead of 33%.
3. Facts relevant for disposal of these petitions are that petitioners are students of respondent No.1-college, who took admission in B.Sc. under graduate course in the academic session 2022-23 and submitted their examination forms for B.Sc. 1<sup>st</sup> semester. Exam of 1<sup>st</sup> semester was conducted by respondent No.1- college in the month of December, 2022 and January, 2023 and thereafter the results were declared in the month of April, 2023. After declaration of results, petitioners came to know that minimum marks for passing the subjects was 40% instead of 33% which made petitioners to file these writ petitions.



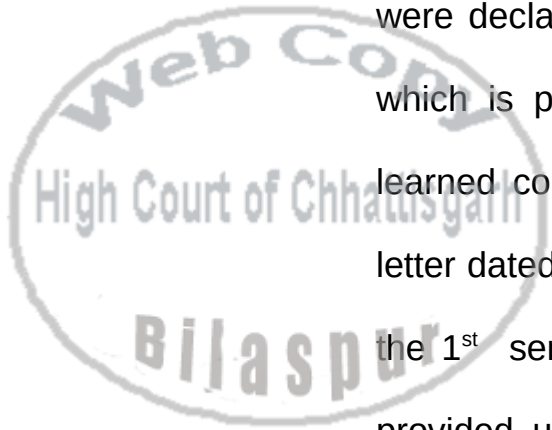


4. Learned counsel for petitioners submits that petitioners after passing their higher secondary school examination in the year 2022, took admission in Bachelor of Science (B.Sc.) course at respondent No.1-college. Respondent No.1 is affiliated to Pt. Ravi Shankar Shukla University, Raipur. At the time of admission of petitioners, Revised Ordinance No.21 was prevailing, which was also provided to petitioners. In the Revised Ordinance No.21, information with respect to pattern in which the course is to run, exams are to be conducted, pattern of exams as well as the minimum marks required to pass each subjects and the semester is being provided. According to Clause - 8 of the Revised Ordinance No.21, every students/examinee has to obtain not less than 33% of the total marks in each subject/group of subjects and in the subject/group of subjects which includes both theory and practical examination, an examinee has to pass in both theory and practical examination separately. After admission of petitioners, respondent No.1 conducted 1<sup>st</sup> semester exam in December, 2022, which were in accordance with revised Ordinance No.21. After starting of 1<sup>st</sup> semester examination, respondent No.1 brought in the Ordinance No.197. According to Ordinance No.197, minimum passing marks was enhanced to 40% which was earlier 33% as per Ordinance No.21. The Ordinance No.197 though notified on 11.01.2023 was





retrospectively applied to petitioners who got admitted and appeared in the examination according to Revised Ordinance No.21. It is contended that the ordinance which is brought at later point of time cannot be made applicable retrospectively without there being any specific clause or provision contained therein. In the Ordinance No.197 there is no mention of its applicability from retrospective date and therefore, if at all the Ordinance No.197 is to be applied to the course it would only be prospectively. He contended that results of the petitioners were declared on 17.04.2023 applying the Ordinance No.197 which is per-se illegal and arbitrary. It is the contention of learned counsel for petitioners that respondent No.1 vide its letter dated 26.04.2023 issued direction that passing marks for the 1<sup>st</sup> semester examination is to be 40% and not 33% as provided under the Revised Ordinance No.21 and brochure earlier provided to petitioners and on the same date it is further noticed that 1<sup>st</sup> and 2<sup>nd</sup> internal examinations to be held on 04.05.2023 and petitioners are not being allowed to appear in the said internal exams on the ground that they could not clear the 1<sup>st</sup> semester examination and they are required to repeat the same. The said information was supplied based on the Ordinance No.197, which came only after completion of 1<sup>st</sup> semester examination. He submits that the said decision of respondent No.1 and 2 of making the Ordinance No. 197

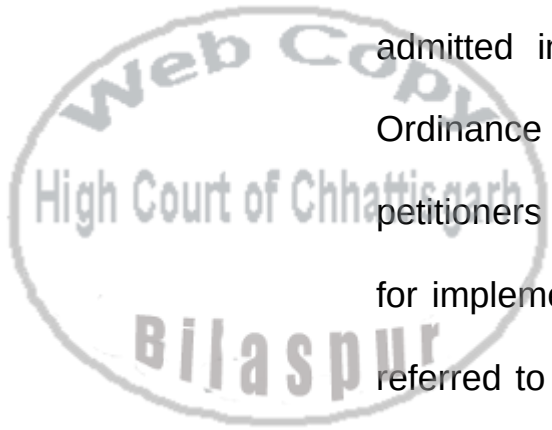






applicable to petitioners' 1<sup>st</sup> semester exam which was held prior to coming into force the new ordinance is bad in law. In support of his contention, he placed reliance upon the decision of Hon'ble Supreme Court in case of **Assistant Excise Commissioner, Kottayam & Ors. Vs. Esthappan Cherain & Anr.** reported in **(2021) 10 SCC 210.**

5. Mr. Amrito Das, learned counsel appearing on behalf of respondents No.1 and 3 vehemently opposes the submission of learned counsel for petitioners, that petitioners were admitted in respondent No.1-college according to Revised Ordinance No.21. He contended that prior to admission of petitioners with respondent No.1-college, decision was taken for implementing National Education Policy, 2020 (Hereinafter referred to as 'NEP -2020'), introduced by the Government of India, Ministry of Human Resources on 03.07.2020. Based on the NEP-2020, University Grants Commission (In short 'UGC') wrote letter to the Higher Education Institutions/Department for implementation of recommendation in NEP-2020 and accordingly, proceeding was started. Prior to decision taken within the State of Chhattisgarh, in other States, recommendation of the NEP 2020 has already been implemented. Guidelines were also issued by the UGC in this regard. Accordingly, the Chhattisgarh State Higher Education Council in its 5<sup>th</sup> meeting dated 30.05.2020 recommended for





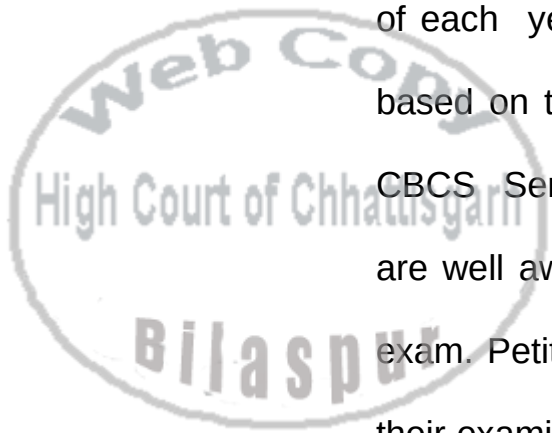


implementation of NEP-2020 in phase wise manner. After the recommendation of Council in its meeting dated 30.05.2022, the Commissioner, Higher Education, Nawa Raipur wrote letter to Principals and the Examination Controllers of all the autonomous colleges within the State of Chhattisgarh along with minutes of meeting dated 22.06.2022 for taking appropriate action according to the meeting held on 22.06.2022. In the meeting, the autonomous colleges have taken decision for starting four years bachelor course according to semester pattern and restructuring of course at college level after approval from its Academic Council. The autonomous colleges have sent academic, administrative activities, exam pattern and valuation procedure separately by each of the colleges in the office of the Commissioner, Higher Education which was forwarded to the State Government, Higher Education Department on 19.07.2022. The Directorate of Higher Education Department issued directions for implementation of semester pattern exam under Choice Based Credit System (In short 'CBCS') Semester Scheme for academic session 2022-23 in five of the colleges as out of 8 autonomous colleges, in 3 colleges semester pattern exam is already prevailing. This direction was issued on 19.07.2022 which shows that prior to starting of the academic session 2022-23, decision was already taken for implementation of



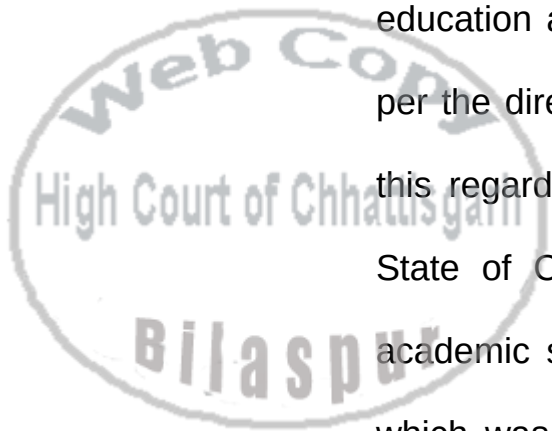


NEP -2020 policy undergraduate course in the autonomous colleges to be of four years and examination to be semester based. Accordingly, notice was published on 26.07.2022 regarding starting Four Year Undergraduate Programme, C.B.C.S. Semester Scheme. He contended that this pattern of course and examination was only under the new decision taken by the State Government and its direction issued. Prior to it, according to Revised Ordinance No.21, the undergraduate course was of three years and the examination of each year to be held annually. Petitioners took admission based on the new undergraduate course of four years under CBCS Semester Scheme and on the date of admission they are well aware about the nature of course and the pattern of exam. Petitioners after getting admission have also submitted their examination forms for appearing in the 1<sup>st</sup> semester exam and therefore also it cannot be said that petitioners have got themselves admitted as per the Revised Ordinance No.21. The State Government had already taken decision for implementation of NEP-2020 undergraduate course which is to be provided to the students who have taken admission in the academic session 2022-23. Petitioners after getting admission, appearing in the semester exams as per the new policy decision taken by the university, approved by the State Government, cannot be permitted to turn around and





challenge the decision of implementation of NEP-2020 and the nature of course and the pattern of examination. Petitioners cannot be permitted to approbate and reprobate at the same time. In support of his contention, the counsel has placed reliance upon the decision of Hon'ble Supreme Court in case of **State of Uttar Pradesh Vs. Karunesh Kumar & Ors.**, reported in **2022 SCC OnLine SC 1706**. He next contended that once the unanimous decision was taken by the Government, the Department as also the college of providing education according to NEP- 2020 and its implementation as per the directives issued by the UGC and directives issued in this regard to the autonomous colleges 8 in numbers in the State of Chhattisgarh to implement the NEP- 2020 in the academic session 2022-23, then, only because of ordinance which was under consideration for approval and notification, will not nullify the entire proceedings and the exam conducted by the respondent No.1. He also contended that after last date of admission, induction programme was organized by respondent No.1 in which, introductory speech with regard to all curriculum was brought to the notice of the students participated in the induction programme. Except few, all the students who took admission in undergraduate course for the academic session 2022-23 participated. Copy of their registration along with their signatures is filed along with reply. The documents which





petitioners have filed at page No.35 in WPC No.2086 of 2023 showing minimum passing marks to be 17 is not approved ordinance but it is only a proposal submitted which was not approved. Considering that all the eight colleges gave different curriculum, decision was taken to adopt the draft ordinance submitted by Atal Bihari Bajpai University, Bilaspur, to bring uniformity and it was forwarded for its administrative approval on 07.09.2022. After its approval it was notified on 11.01.2023. The intention of the government and the university was to adopt the Ordinance No.197 which was sent for its approval on 07.09.2022 and therefore, there is no error or illegality in conducting the exam based on the Ordinance No.197 which was awaiting for administrative approval. The draft ordinance was prepared much before submission of examination form by the students of undergraduate course and starting of examination and therefore, the exams in which petitioners appeared/participated based on the new education policy and semester pattern they would be regulated by the draft ordinance. In support of his contention he placed reliance upon the decision of Hon'ble Supreme Court in case of **Vimal Kumari Vs. State of Haryana & Ors.**, reported in **(1998) 4 SCC 114**.

6. Mr. Raghavendra Pradhan and Mr. Neeraj Choubey, learned counsel for respondent No.2/university would submit that writ



petitions are filed after thought. Petitioners with open eyes took admission in four years undergraduate course which is in accordance with NEP- 2020, submitted their examination form for 1<sup>st</sup> semester exam according to NEP-2020, appeared in the examination which was under CBCS Semester Scheme and only after becoming failed have filed these writ petitions. He submits that most of the students of undergraduate course have also participated in the induction programme organized by the respondent No.1- college in which the course, pattern of examination were duly informed. As petitioners could not clear the first semester examination successfully according to Ordinance No.197, they stood disqualified to pursue the second semester examination. The students who failed in two subjects can take benefit of "Allow to Keep Term" (ATKT) system and will be permitted to participate in the second semester examination. Notice dated 17.04.2023 and 26.04.2023 are only enabling in nature to proceed further for conducting second semester examination. There are as many as 836 students, who took admission in the respondent No.1 college under four year undergraduate programme out of which 763 are presently pursuing their education in the said colleges. They had to appear in the second semester examination, however, the said second semester examination was deferred in order to avoid any legal complications. Ministry





of Human Resources Development introduced the National Education Policy 2020 which brought paradigm shift in the curriculum and framework of the course. UGC issued guidelines for multiple entry and exit in the academic programmes offered in higher education institution. Few of the State like Karnataka, Madhya Pradesh, Uttar Pradesh, Andhra Pradesh, Telangana, Rajasthan, Assam etc. have already implemented the NEP- 2020 for all the courses in their State. In the State of Chhattisgarh decision was taken for implementation of the NEP- 2020 and the meeting was convened on 30.05.2022 at the Chhattisgarh State Higher Education Council. Decision was taken for its implementation in phased manner for academic session 2022-23 and in the first phase it was to be implemented in all autonomous colleges. Accordingly on 22.06.2022, decision was taken in the meeting for implementation of CBCS Semester Scheme. Adopting the submission made by learned counsel for respondents No.1 and 3, it is also further contended that the meeting of the council of respondent No.2 was held on 17.08.2022 and the decision was taken for uniform ordinance for undergraduate course. The State Government wrote letter to the Chancellor/Vice Chancellor of the university for taking decision on ordinance. The University has also constituted a committee for proposed four year undergraduate course with





multiple entry and exit, under CBCS for autonomous colleges affiliated to university on 03.11.2022 and the university further forwarded a letter to the Commissioner, Directorate of Higher Education on 15.11.2022 for approval of Ordinance No.197. All the proceedings of forwarding the Ordinance No.197 for its approval was completed in the month of November, 2022 i.e. prior to conducting of semester examination which was held in the month of December, 2022 as stated by learned counsel for petitioners. He contended that submission of learned counsel for petitioners that petitioners were given admission under Ordinance No.21 is not correct, once the decision was taken prior to starting of admission, petitioners were given admission in four years undergraduate programme according to CBCS Semester Scheme it is highly improbable that the petitioners were admitted according to the Ordinance No.21. The issuance of notification/information under consideration at later stage in the month of January, 2023 would not be in any manner affect the academic curriculum which was implemented by the university and the colleges. Petitioners on the date of admission and on the date of examination were well aware of the nature of the course, pattern of exam and therefore, there is no merit in the submission of learned counsel for petitioners.

7. Mr. J.K. Gupta, learned counsel appearing on behalf of





interveners (in WPC. No. 2305 of 2023) supporting the arguments advanced on behalf of respondents No.1 to 3 would submit that interveners is being affected as second semester exam is delayed.

8. I have heard learned counsel for parties and perused the documents placed on record.

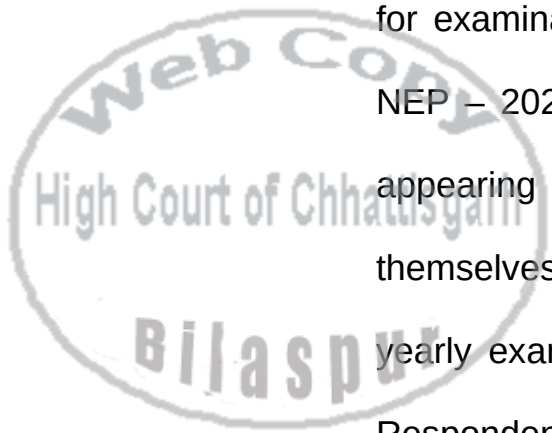
9. The main contention of learned counsel for petitioners is that petitioners took admission according to Revised Ordinance No.21 and therefore, for awarding of the marks and the minimum marks for passing of subjects would be governed by Revised Ordinance No.21 which prescribes 33% marks as minimum.

10. Before proceeding further I find it appropriate to glance the clauses under the Revised Ordinance No.21. Under Clause-1, it specifies that three year course has been broken up into three parts. Part-I known as B.Sc. Part-I, examination is to be held at the end of first year, Part-II known as B.Sc. Part-II, examination to be held at the end of second year and Part-III known as B.Sc. Part-III, examination to be held at the end of third year. It further provides that a candidate who after passing B.Sc.-I examination of the university or any other examination recognized by the university as equivalent there to, has attended a regular course of study for one academic





year in an affiliated college or in the Teaching Department of the university shall be eligible for appearing at the B.Sc. Part-II examination. From the above clauses under the Revised Ordinance No.21, it is apparently clear that it provides for three year undergraduate course and it provides yearly examination for each year. It no where mentions of semester examination, whereas petitioners took admission in B.Sc. Undergraduate four year course and have further relied upon documents mentioning the semester -I Core Course-I. Submission of form for examination is as per new pattern brought in pursuant to NEP – 2020. From the aforementioned documents, it is also appearing that the course which petitioners opted and get themselves admitted was not the course which provides for yearly examination but it provides for semester examination. Respondent No.1 and 3 has also enclosed letter written by the Commissioner, Directorate of Higher Education on 19.07.2022 to Principal of all the autonomous colleges in the State of Chhattisgarh directing implementation of the CBCS Semester Scheme and also for ensuring its implementation in all five remaining autonomous colleges. Notice was published by respondent No.1 on 26.07.2022 about the decision/direction issued by the Higher Education Department and for starting of the four year undergraduate course under CBCS Semester Scheme. According to pleadings made by respondent No.2 -





University, it is reflecting that 836 students took admission in the respondent No.1 college out of which 763 are pursuing their education but writ petition was not filed by all the students that they were not made aware about four year undergraduate course and CBCS Semester Scheme but for petitioners who could not able to pass the first semester exam. Documents enclosed along with the reply submitted by respondent No.1 & 3 would further show that decision for implementation of NEP-2020 of the Government of India was taken in 5<sup>th</sup> meeting dated 30.05.2022. It was to be first implemented in the autonomous colleges. In the meeting held on 22.06.2022, Principals and the Examination Controllers of all the autonomous colleges were present. Initially the Directorate of Higher Education called the report from all colleges separately for academic, administrative activities, exam pattern and valuation system. Thereafter, vide order dated 01.09.2022, the State Government constituted a six members Committee for considering the amendment to be made in the ordinance of the different universities so as to bring uniformity in the ordinances of the university. Accordingly, the meeting was convened on 03.09.2022 and the Committee considering that amendment proposed by the different university is again to be sent to the university for its approval from Academic Council, Executive Council, it may again differ from one another and may also be





delayed, have decided to adopt the ordinance submitted by the Atal Bihari Bajpai University, Bilaspur and accordingly the State Project Office recommended for approval of the proposed ordinance of the Atal Bihari Bajpai University, Bilaspur vide letter dated 07.09.2022. The letter was forwarded along with draft ordinance and minutes of meeting to Secretary, Higher Education Department, State of Chhattisgarh. Under Clause 12.3 of the draft ordinance it is mentioned that the minimum percentage of marks to pass the programme in each semester shall be 40% in each subject (including both internal and external marks) as well as consolidated marks in a semester.

11. The Executive Council approved the draft ordinance in its meeting dated 11.11.2022. The decision of Executive Council is extracted below for ready reference :-

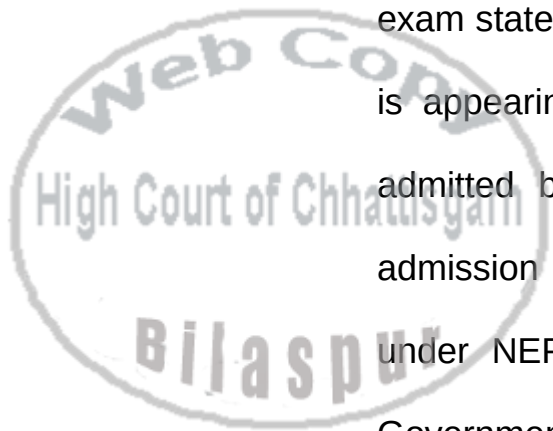
“निर्णय : छत्तीसगढ़ शासन उच्च शिक्षा विभाग, मंत्रालय महानदी भवन, अटल नगर, नवा रायपुर के पत्र क्र. एफ 17-110/2022/38-2, दिनांक 10.08.2022 एवं राज्य शासन के पत्र क्र. एफ 17-110/38-2, दिनांक 11.10.2022 के परिप्रेक्ष्य में विश्वविद्यालय विद्या-परिषद की सीई समिति की बैठक दिनांक 10.11.2022 के अनुशंसानुसार विश्वविद्यालय में चार वर्षीय स्नातक पाठ्यक्रमों के लिए प्रस्तावित प्रारूप अध्यादेश का अनुमोदन किया गया।”

12. From the aforementioned facts of the case it is appearing that the decision for implementation of NEP - 2020, the pattern of



course exam i.e. four year undergraduate course, CBCS Semester Scheme was very much there on the date when petitioners took admission in the respondent No.1- college. Before appearing in the examination, the draft ordinance was also forwarded for its approval of the competent authority. It is based upon the draft ordinance, the examination was conducted at later point of time in the month of December, however, it was notified on 11.01.2023. From the facts, as also the documents relied upon by petitioners (the semester pattern exam stated to be provided to them at the time of admission) it is appearing that on the date of admission, they were not admitted based on the Revised Ordinance No.21 but the admission was given and accepted by the petitioners, was under NEP - 2020, which was implemented by the State Government initially at all autonomous colleges within the State of Chhattisgarh affiliated with different universities of the State of Chhattisgarh. On the date of admission and the examination, petitioners were aware of pattern of exam to be semester pattern which was not under the earlier ordinance (Revised Ordinance No.21).

13. Respondent No.1 to 3 have also enclosed the list of the students, who participated in the induction programme held on 23.09.2022 & 24.09.2023 of Bio-Groups and Maths Group respectively and further enclosed the notice dated 26.07.2022





intimating that course for academic session 2022-23 will be of four year course at autonomous colleges under CBCS Semester Scheme. In the notice of induction programme it is mentioned about four year CBCS Credit System, multiple entry and multiple exit and information of different subjects of education along with other information with regard to activities in the college. From the copy of the notice dated 26.07.2022 and further notice of induction programme it is also appearing that the students were made known about the period of undergraduate course and also the pattern of examination which was not part of Revised Ordinance No.21 and therefore, it can not be said that petitioners took admission in the respondent No.1 – college according to the Revised Ordinance No.21.

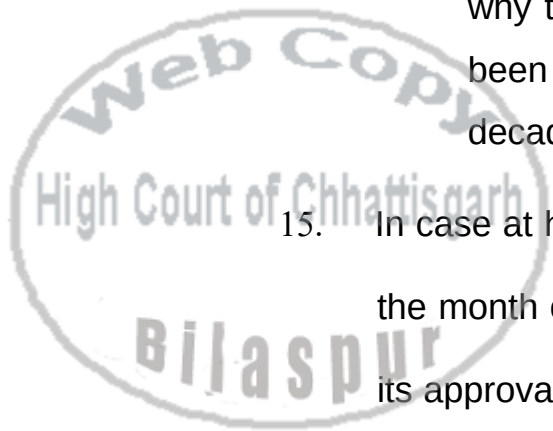
14. Petitioners were admitted in the new four year undergraduate course based on the CBCS Semester Scheme and its ordinance was under the stage of its framing. The intention of government as also the university and the colleges was to implement the proposed/draft ordinance and the draft ordinance was approved by the committee prior to starting of first semester examination and also forwarded for its approval before the competent authority. Hon'ble Supreme Court in case of **Vimal Kumari** (supra) while considering the challenge to the promotion and seniority based on the draft rules has



observed thus :-

“8. In the absence of any decision of the State Government that so long as the Draft Rules were not notified, the service conditions of the appellant or the respondent and their other colleagues would be regulated by the "Draft Rules" prepared in 1983, it was not open either to the Government or to any other authority, nor was it open to the High Court, while disposing of the writ petition, to invoke any of the provisions of those Rules particularly as the Government has not come out with any explanation why the Rules, thought prepared in 1983, have not been notified for the long period of more than a decade. The delay, or, rather inaction, is startling.”

15. In case at hand also from the documents it is appearing that in the month of September the draft ordinance was forwarded for its approval to the competent authority, however, it was notified after about more than three months. As on the date of admission and appearing in the examination, the course in which the petitioners along with about 599 students took admission and the semester pattern of exam was not governed by any notified ordinance, but under proposed scheme under NEP-2020 and proposed draft ordinance which on the date of examination was under consideration for its approval, the submission of learned counsel for petitioners that course and the exam of petitioners that too the semester pattern exam in which the petitioners participated will be governed by the

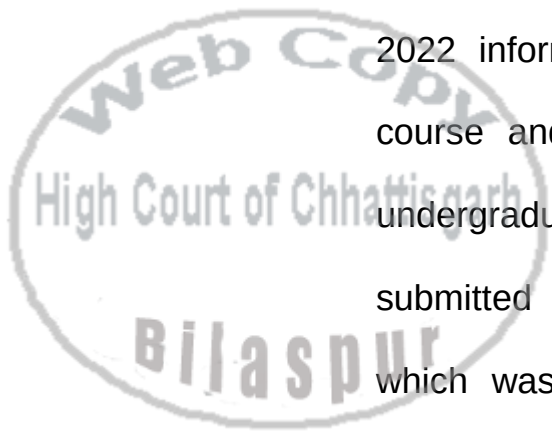






Revised Ordinance No.21 (old) is not sustainable.

16. Further the submission of learned counsel for petitioners that application of the Ordinance No.197 cannot have retrospective effect in the facts of the case is also not sustainable. Petitioners, as discussed above took admission in the four year undergraduate course which was brought to the notice of the students by respondent No.1 by publishing notice and also immediately after their admission, in the induction programme organized by respondent No.1 in the month of September 2022 information was given to all the students about the course and pattern of exam. Knowing well the period of undergraduate course, examination pattern, petitioners submitted their examination forms for 1st semester exam which was not the pattern of examination under Revised Ordinance No.21 (as it prescribes yearly examination). Petitioners after submission of examination form also participated in the examination, however, unfortunately they could not able to clear all the subjects. After submission of examination form and participating in the CBCS Semester Scheme of examination, petitioners cannot be permitted to turn round and challenge the nature of course in which they took admission and pattern of examination in which they appeared and participated, to be not in consonance with the Revised Ordinance No.21 (old). Petitioners can not be permitted to





approbate and reprobate. Hon'ble Supreme Court while considering the challenge to the recruitment process by unsuccessful candidates in case of **Madan Lal Vs. State of J & K**, reported in **(1995) 3 SCC 486** has held as under :-

“9. ....The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the concerned contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. 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 this petition. It is now well settled 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 Selection Committee was not properly constituted.”

17. In case of **K.H. Siraj Vs. High Court of Kerala**, reported in **(2006) 6 SCC 395**, Hon'ble Supreme Court while considering the challenge to the procedure of selection in the recruitment process by the unsuccessful candidates has held as under :-

“73. The appellants/petitioners having participated in the interview in this background, it is not open to the appellants/petitioners to turn round thereafter





when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper.”

18. In case of **Karunesh Kumar (supra)**, Hon'ble Supreme Court while considering the challenge to selection process has observed thus :-

“22. In the case at hand, the un-selected candidates want to press into service a part of the 1978 Rules while accepting the 2015 Rules. Such a selective adoption is not permissible under law, as no party can be allowed to approbate or reprobate, as held by this Court in *Union of India v. N Murugesan* (2022) 2 SCC 25:

**“Approbate and reprobate**

26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have





the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.

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27.2. State of Punjab v. Dhanjit Singh Sandhu [(2014) 15 SCC 144] : (SCC pp. 153-54, paras 22-23 & 25-26)

“22. The doctrine of “approbate and reprobate” is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide CIT v. MR. P. Firm Muar [AIR 1965 SC 1216].)

23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party





and derived the benefit out of it, he cannot challenge it on any ground. (Vide Maharashtra SRTC v. Balwant Regular Motor Service [AIR 1969 SC 329].) In R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683] this Court has observed as under : (R.N. Gosain case [(1992) 4 SCC 683], SCC pp. 687-88, para 10)

'10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'.'

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25. The Supreme Court in Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd. [(2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153], made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or





binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when he has to speak, from asserting a right which he would have otherwise had.”

23. The aforesaid principle of law applies to the present case. It is not open to the candidate to contend to the contrary so that he can have the best of both sets of rules. Not only is there a difference in the mode of selection, but also in the constitution of recruiting authority as well. It is pertinent to note, that under the 2015 Rules, there is no such procedure for preparing a waiting-list, as the Respondents seek to contend.”

19. In view of above discussions made primarily the fact that petitioners themselves placed reliance upon the documents filed by them to show that they were issued the documents at the time of admission mentioning the semester pattern exam,





dis-entitles them to rely upon the Revised Ordinance No.21 as the said ordinance does not provide for the semester pattern exam but it only provides for yearly examination of B.Sc. three year course. Further the notice enclosed along with reply by respondent No.1 and 3 to show that it was published intimating the students the pattern of course to be four year undergraduate course, the notices of induction programme specifying four year course and the CBCS Semester Scheme examination, petitioners submitted examination form and participated in semester exam, in the opinion of this Court, petitioners are not entitled for any relief as prayed for by them when only few of petitioners out of many have raised the objection even to the pattern of course of four year degree course. Petitioners were not restricted to obtain more marks because of the Ordinance 197, but unfortunately petitioners secured less marks i.e. below minimum marks. The decision relied upon by learned counsel for petitioners in case of **Karunesh Kumar** (supra) does not help the case of petitioners.

20. For the forging discussion made here-in-above, all the writ petitions being devoid of substance are liable to be and are accordingly dismissed.

Sd/-  
**(Parth Prateem Sahu)**  
Judge