

**(1990) 07 SHI CK 0037**

**In the High Court Of Himachal Pradesh**

**Case No : C.W.P. No's. 325 and 327 of 1990**

Anuj Gupta and Others

APPELLANT

Vs

State and Another <BR> Parents of Students Vs State and Others

RESPONDENT

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**Date of Decision :** 17-07-1990

**Acts Referred:**

Societies Registration Act, 1860 — Section 14

**Citation :** (1990) 2 ShimLC 296

**Hon'ble Judges :** P.C. Balakrishna Menon, C.J.;Devinder Gupta, J

**Bench :** Division Bench

**Advocate :** Rajeev Kataria, K.D. Sood, D.K. Khanna, Indar Singh and M.L. Sharma, for the Appellant; Chhabil Dass, General and Pandit Om Prakash, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.C. Balakrishna Menon, C.J.—Civil Writ Petitions No. 325 of 90, 355 of 90, 332 of 90, 335 of 90, 336 of 90 and 347 of 90 are by students seeking admission for the Engineering Courses commencing from 1990-91. All these students have passed the 10 plus 2 examination conducted by the Himachal Pradesh Board of School Education and have secured very high percentage of marks. Some of these students seek admission in the Regional Engineering College (for short R.E.C.) Hamirpur or in other R.E.Cs. outside the State. Others seek nomination by the Government of Himachal Pradesh for the under-graduate courses in Engineering and Architecture against the seats allotted by the Ministry of Human Resources Development, Government of India for candidates from the State of Himachal Pradesh. Some of the Petitioners have sought admission either for the course of studies in the R.E.C. or in Engineering Colleges outside the State. C.W.P. No. 327 of 1990 and 363 of 1990 are based on letters addressed to the Chief Justice of this Court. C.W.P. No. 327 of 1990 purports to be by the "Parents of students who figured in the merit list of + 2 HP Edu. Board Exa. SO". C.W.P. No. 363 of 90 is by "a student of 10 + 7 passed from H.P. Board. Bona fide

Himachali Security 88% in PCM in 1990 and as aspirant for admission in REC Hamirpur. Since all these writ petitions raise the common questions of law these petitions are disposed of by a common judgment.

2. Annexure P-I produced alongwith C.W.P., No. 332 of 1990 is the admission brochure for 1990-91 (Prospectus) issued by the R.E.C. Hamirpur. Page-1 of the prospectus shows that the R.E.C. Hamirpur (Himachal Pradesh) is a joint enterprise of the Government of India and the State Government of Himachal Pradesh and it is run by a Society registered under the Registration of Societies Act XXI of 1860 by name The Regional Engineering College (Hamirpur) Society. The administrative control of the Society which runs the college is vested in a Governing Body i.e., the Board of Governors. The college is affiliated to the Himachal Pradesh University. The college offers degree-courses in (i) Civil Engineering (ii) Electrical Engineering (iii) Electronics and Communication Engineering and (iv) Computer Science and Engineering.

3. The Board of Governors of the Society consist of the following persons namely:

(1) The Chairman appointed, by the State Government with the approval of the Central Government;

(2) Three nominees of the Central Government, namely:

(i) The Financial Advisor, Ministry of Education or his nominee.

(ii) The Deputy Educational Advisor (Tech.) Incharge of the R.E.Cs. Ministry of Education, New Delhi, or his nominee, and

(iii) The Regional Officer, Ministry of Education, Northern Regional Office, Kanpur, or his nominee.

(3) Three nominees of the State Government including the Secretary of Finance and Secretary of Technical Education (ex-officio).

(4) A representative of the All India Council for Technical Education.

(5) The Vice-Chancellor of the University to which the college is affiliated or a University professor nominated by him.

(6) Two Industrial Technologists nominated by the Central Government in consultation with the State Government.

(7) A nominee of Indian Institute of Technology.

(8) A nominee of the University Grants Commission; and

(9) The Principal of the College who will be ex-officio Member-Secretary of the Board of Governors.

4. It is not disputed that the Chief Minister of the State of Himachal Pradesh is the Chairman of the Board of Governors The prospectus shows that as per the common admission pattern, the R.E.C. at Hamirpur is to process all applications

of candidates who have passed the qualifying examination from schools/colleges situated in Himachal Pradesh for admission to the R.E.C. at Hamirpur and also other Regional Engineering Colleges in the country. The R.E.C. at Hamirpur selects students for study in that college and also for nomination towards the State's quota in the other R.E.Cs. in the country. The candidates who have passed the qualifying examination from schools/colleges situated outside Himachal Pradesh are required to apply to R.E.Cs. in their respective areas from which the candidates concerned have passed the qualifying examination. There are altogether 53 seats in R.E.C. Hamirpur and 37 seats in R. E Cs. outside the State allotted for students of Himachal Pradesh. The relevant part of Paragraph-7 of the prospectus reads:

Admission to all Regional Engineering Colleges listed in Table-I will be made on the basis of merit determined by the percentage of aggregate marks in the subjects of Physics, Chemistry and Mathematics in the qualifying examination(s) after giving equal weightage to each subject. The candidate should also be passed in English...

As per Paragraph-8, the last date for receipt of applications is on the 25th June, 1990 (5-00 p.m.). There is a provision in the Rules at page 17 of the prospectus that the admission Rules are subject to modification at any time.

5. Annexure P-2 in C.W.P. No. 332 of 1990 is the prospectus issued by the Government of Himachal Pradesh (Department of Technical Education, Vocational and Industrial Training), for selection of candidates to be, nominated by the Government against seats allotted for students in H.P. in Engineering Colleges (other than R.E.Cs) outside the State. As per the prospectus there are altogether 42 seats available for the students of Himachal Pradesh in the Engineering Colleges outside the State., As per Paragraph-2 of the prospectus, the courses for which nominations are to be made for the Session commencing from 1990-91 are:

- (i) Degree Course in Mechanical Engineering.
- (ii) Degree Course in Architecture.
- (iii) Degree Course in Mining Engineering.
- (iv) Degree Course in Textile Technology.. (v) Degree Course in Chemical Engineering.
- (vi) Degree Course in Production Engineering.

Paragraph-7 of Annexure P-2 prospectus reads:

Himachal Pradesh Government will -nominate candidates purely on merit on the basis of percentage of marks obtained in the subjects combination consisting of Physics, Chemistry and Mathematics (P.C.M.) in the qualifying examination prescribed for the Course/Discipline in accordance with the rules and regulations of the concerned college. The candidates for sports category in whose case merit

in sports is the sole criterion shall have to fulfil the minimum academic standard prescribed for admission by the Engineering College (or University) to which he is nominated.

By a separate notification produced as Annexure P-1 in C.W.P. No. 335 of 1990, published in the Indian Express, dated June 18, 1990, the last date for receipt of applications is 2nd July, 1990 and the selection of the candidates is to be made on 19-7-1990 for the candidates from the reserved-quota and on 20-7-1990 for others on open merit. This notification also shows that the Himachal Pradesh Government will nominate candidates purely on merit basis i.e., on the basis of the percentage marks obtained in Physics, Chemistry and Mathematics in the qualifying examination.

6. The results of the 10+2 examination held by the Himachal Pradesh Board of School Education were announced on 22-5-1990 and the results of the Central Board of School Education were announced on 4-6-1990. The respective Petitioners in these batch of writ petitions have secured very high marks and on the basis of merit, they are entitled for admission to the respective courses for which they have applied.

7. The basis of selection for admission to the courses of Studies both in R.E.Cs and other Engineering Colleges was later altered for merit to be determined on the basis of the results at a Pre-Entrance Test (P.E.T.). Annexure P-4 in C.W.P. No. 336 of 1990 is the notification in the Indian Express dated 20th June, 1990, styled as a "Corrigendum" to an earlier notification dated 12-4-1990 and it reads:

...the criterion for selection will now be determined on Merit based on Pre-Entrance Test (PET) to be conducted by Himachal Pradesh University Simla instead of selection based on merit of marks obtained in 10+2 Science standard (NM) of H.P. Board of School Education or its equivalent, The last date for receipt of applications is extended till 12th April, 1990 The PET is to be held at Simla on July 28, 1990.

A similar notification is issued with respect to Engineering Colleges other than R.E. Cs and the same is produced as Annexure P-2 in CWP No. 335 of 90: This notification also prescribes a Pre-Entrance Test for determination of merit for the purpose of selection of candidates for nomination to other Engineering Colleges. The last date for receipt of applications is extended till 12th July, 1990 and a PET is to be conducted by the Himachal Pradesh University at Simla on 28th July, 1990.

8. Petitioners No. 1 and 2 in CWP No. 336 of 1990 have produced Annexures P-5 and P-6 to show that they were called for a Entrance Test for admission to the Birla Institute of Technology Mesra, Ranchi to be held on 26th and 27th of May, 1990. They are also Petitioner Nos. 1 and 2 in G.W.P. No. 335 of 90. They have produced these hall-tickets to show that relying on the prospectus that admission is based on merits determined on marks obtained at the qualifying examination they have not appeared for the Entrance Test at the Birla Institute of Technology

for the reason that they are sure to be selected on merit basis. The position has now been altered by the subsequent notification prescribing a PET requiring them to take their chance alongwith others who had not obtained high marks in the qualifying examination.

9. Affidavits-in-reply have been filed in CWP No. 336 of 90 on behalf of the State of Himachal Pradesh and also by the Principal, R.E.C. Hamirpur. In both the affidavits, it is stated that it is with a view to bring uniformity for deciding merit of eligible candidates coming from different Boards/Universities conducting 10+2 level of qualifying examinations that the Government and the R.E.C. authorities took the decision to conduct the Pre-Entrance Test from the current year 1990-91 onwards. The same stand is taken in the affidavit-in-reply filed on behalf of the Government of Himachal Pradesh in C.W.P. 335 of 90. It is, however, not disputed that the basis of selection hitherto had all along been merit based on the marks obtained in Physics, Chemistry and Mathematics in the qualifying examination.

10. This sudden change in the mode of selection after issue and publication of the prospectus is challenged on various grounds by the different Counsels appearing in these batch of writ petitions.

11. Shri D.K. Khanna appearing for the Petitioners in CWP Nos. 335 and 336 of 1990 has urged that the rules contained in the prospectus are representations to the candidates seeking admission on which they have placed reliance, and it is not open to the Respondents to alter the mode of selection and adopt a method different from that contained in the prospectus. The learned Counsel submits that the Respondents are estopped from changing the mode of selection after they have held out a representation to the respective candidates and the decision to hold a PET is, therefore, un-sustainable in law. Bhagwati, C.J. in *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, stated at page 383:

Now the doctrine of promissory estoppel is well-established in the administrative law of India. It represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, true to its form, stepped into mitigate the rigour of strict law. This doctrine, though of ancient vintage, was rescued from obscurity by the decision of Mr. Justice Denning as he then was, in his celebrated judgement in *Central London Property Trust Ltd. v. High Trees House Ltd.* (1956) 1 All ER 256. The true principle of promissory (estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship, to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so,

having regard to the dealings which have taken place between the parties. It has often been said in England that the doctrine of promissory estoppel cannot itself be the basis of an action lit can only be a shield and not a sword : but the law in India has gone far ahead of the narrow position adopted in England and as a result of the decision of this Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, it is now well-settled that the doctrine of promissory estoppel is not limited in its application, only to defence but it can also found " a cause of action. The decision of this Court in *Moti Lal Sugar Mills* case contains an exhaustive discussion of the doctrine of promissory estoppel and we find ourselves wholly in agreement with the various parameters of this doctrine outlined in that decision.

Pathak, J. (as he then was) and Amarendra Nath Sen, J. had agreed with the above preposition of Bhagwati, C.J. even though they had reached a different conclusion on the facts of the case.

12. The principle laid down in *Moti Lal Sugar Mills* case, is referred to and followed in a later decision of the Supreme Court in *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*,

13. In *Abodha Kumar Mohapatra and Others Vs. State of Orissa and Others*, a Division Bench of the Orissa High Court had to consider a similar question vis-a-vis the candidates for admission. In that case the Principal of the Medical College, Cuttack had published a notice inviting applications for admission to the Medical Colleges in the State. According to the notice, selection was to be based on merit determined on the basis of the marks obtained in the medical group of Science subjects in the qualifying examination. Thereafter the Government issued certain executive instructions for regionwise selection of the candidates and making special provisions/applicable to lady students. The question was whether such alteration brought about in the mode of selection after the publication of the notice is sustainable in law? Considering this aspect of the question, the Division Bench held;

The question is : Once the candidates have acted on the said representation made in the Notice and relying on the same had made applications for admission on the basis thereof, can the Government later on abruptly to the detriment of the candidates give a directive to the Selection Board purporting to eliminate the better qualified candidates who have secured high marks in the Science subjects (Medical Group) with additional weightage for B.Sc. candidates? In our opinion, the Government cannot so change the rules abruptly in the manner done. The reasons are these s It is not the case of the Government that the representations made in the Notice were subject to any condition that Government would not be bound to admit students on the basis of merit as determined by marks obtained in the Medical group of Science subjects, if the Government deem it inexpedient to make admissions on that basis. We are unable to accept the argument that the Government is not bound to honour the said representation, relying on which the candidates acted to their detriment. In our opinion, assuming that the power

of the Government in issuing the directives to the concerned authorities is executive in character, even so when it was represented by Government in the Notice that selection for admission will be made on the basis of merit as determined by marks obtained in the Science subjects (Medical group only) in the qualifying examination, the Court has the power to direct the concerned authorities to honour the said representation made to the candidates who had acted on such representation and have been denied the consideration which was due to them on the basis of marks obtained by them in the Medical group of Science subjects. If the Government had acted arbitrarily in issuing their directive in their impugned letter, it is open to judicial review. Where the candidates have acted to their prejudice upon a representation made in the Notice, their claim to be considered on the basis of marks obtained by them in the medical group of subjects cannot be arbitrarily rejected.

14. M.H. Beg, C.J. on behalf of a Division Bench of this Court in *Km. Manju and Another Vs. State*, stated : at page 43:

In *Yabbicom v. The King* 1899 1 QB 444, it was held that: "bye-laws properly made have the effect of laws and a public body cannot, any more than private persons, dispense with the laws that have to be administered; they have no dispensing power whatever.

In other words, the college and the Government which runs the college cannot go behind the rules and observe some procedure or apply some rules or criteria for admission riot found in these rules.

Again, on the principle that the rules contained in the prospectus were representations to the public, or to individuals seeking admissions, on which reliance could be placed by candidates, it would not be open to those who make such representations, even as a result of executive orders, to apply some other rules or criteria not contained in these rules. In support of such a principle, the authority cited was : *Union of India v. Anglo Afghan Agencies* AIR 1968 SC 718.

This decision was followed in *Anil Nag v. State of Himachal Pradesh and Ors.* ILR 1978 H.P. 667, where a Division Bench of this Court stated at page 682:

Apart from what is stated above, it is found that the prospectus which was issued for the academic year 1978-79 embodied rules for admission to the Medical College, Simla, and as such the rules stated therein amounted to a promise held out by the] Government to the general public that admissions to the Medical 1 College, Shimla, would be regulated by these rules only. Of course these rules are not issued under any statutory provision of law and, therefore, these rules found in the prospectus would not be possessing any status of a statutory law. Nonetheless, they do possess the force of law having a binding effect on the Government or other competent authorities for the purpose of giving admission to the College. In this connection we may profitably refer to the decision given by a Division. Pench of this Court in *Km. Manju and Another Vs. State*, wherein it is observed that rules made by such a college, or "on its behalf by the State

Government, and published in form of a prospectus were the representation to the public or to the individual seeking admission and, therefore, it would not be open to those who make such representations, even as a result of executive order, to apply some other rules or criteria not contained" in the published rules. It is in, view of this legal position as regards the binding nature of the rules published in the prospectus that we have to consider whether the Government was legally justified in creating a special category of reserved seats which category was not previously publicised in the prospectus.

The prospectus issued for the year 1978-79 for admission to the. Medical College, Simla, shows that for the purpose of admission to that College only 3 categories of reservations, namely, (one) scheduled castes, (two) scheduled tribes and (three) nominees of the Central Government were mentioned. The students who sought admission to this College obviously did so under a belief induced by these representations that there shall not be any further category of reservations and that the seats which did not fall in the reserved category would be available for the general category. Led by this belief these students might not have tried to obtain admission elsewhere. If that be so, we are of the opinion that it was not open to the Government to make any changes in the categories originally publicised by creating altogether a new category with regard to the additional seats after the concerned students acted on the original representation as regards categories and sought admission in the College.

The learned Advocate General referred to a Note which is added at the end of the prospectus stating that the "College reserved the right to alter the prospectus and-terms and conditions, at any time and that such alterations would be, binding on students". In our opinion, this Note is of no help to the Respondents, because it obviously refers to the power of alteration before the students act upon the representations contained in the original prospectus. Once the students concerned act upon this original representation, the authorities would be estopped from altering the original conditions to the disadvantage of the students who have so acted.

15. The above decision is also an authority for holding that a statement at page-17 of the prospectus relating to R.E.Cs. that the admission rules are liable to alteration or modification does not in any way affect the applicability of the principle of promissory estoppel. We are, therefore, clearly of the view that the alteration or the mode of selection after the prospectus was issued is unsustainable in law.

16. Pt. Om Prakash appearing for an intervener has cited before us the decision of a Full Bench of the Patna High Court in *Padmraj Samarendra and Others Vs. State of Bihar and Another*, and has submitted that the prospectus has no force of law and the legality of any alterations of the same cannot be the subject of judicial review. We do not agree. Whether or not the prospectus has the force of law, the representation contained therein\* is sufficient to sustain a valid plea of equitable estoppel. We are also, bound by the Division Bench decisions of this

Court in Kumari Manju and Anil Nag referred to supra.

17. Shri K.D. Sood, on behalf of some of the Petitioners submits that those candidates who had secured very high marks in the qualifying examination have a "legitimate expectation" of selection for admission to the Engineering Courses and it is not open to the authorities concerned to alter the mode of selection and thwart the "legitimate expectation" of those meritorious candidates. The process of selection commences on the issue of the prospectus calling for applications from qualified candidates. The candidates submit their applications on the faith of the prospectus and the rules for selection contained therein. The prospectus, in both the sets of cases, had announced the mode of selection on merit based on the marks obtained in the three science subjects in the qualifying examination. The candidates who had secured high marks were, therefore, justified in their "legitimate expectation of selection as per the rules contained in the prospectus. As regards election under the Representation of People's Act the Supreme Court in Mohinder Singh GILL and Anr. v. The Chief Election Commissioner and Ors. AIR 1978 SG 851 has held that the process of election commences from the issue of a notification u/s 14 of the Act. It is stated at page 894:

As already pointed out, it is well settled that election covers the entire process from the issue of the notification u/s 14, to the declaration of the result u/s 66 of the Act.

On the same analogy it should be held that the, process of selection starts on the issue of the prospectus The question is whether it is open to the authorities concerned to alter the mode of selection that would seriously jeopardise the legitimate expectation" of the candidates concerned? The concept of "legitimate expectation" is an aspect of administrative law that has developed in recent times.

18. Wade on Administrative Law, Fifth Edition, states at page 464:

In many cases legal rights are affected, as where property is taken by compulsory purchase or someone is dismissed from a public office. But in other cases the person affected may have no more than an interest, a liberty or an expectation. An applicant for a licence, though devoid of any legal right to it, is, as a general rule, entitled to a fair hearing and to an opportunity to deal with any allegations against him. The holder of a licence who applies for its renewal is likewise entitled to be fairly heard before renewal can be refused. So also is a racegoer before he can be put under a statutory ban against entering a public racecourse.

In none of these situations is there legal right, but they may involve what the courts sometimes call "legitimate expectation". This expression furnishes judges with a flexible criterion whereby they can reject unmeritorious or unsuitable claims. It was introduced in a case where alien students of "Scientology" were refused extension of their entry, permits as an act of policy by the Home Secretary. The Court of Appeal held that they had no legitimate expectation of

extension beyond the permitted time, and so no right to a hearing, though revocation of their permits within that time would have been contrary to legitimate expectation. Likewise where car-hire drivers had habitually offended against airport bye-laws, with many convictions and unpaid fines, it was held that they had no legitimate expectation of being heard before being banned by the airport authority. There is some ambiguity in the dicta about legitimate expectation, which may apparently mean either expectation of a fair hearing or expectation of the licence or other benefit which is being sought. But the result is the same in either case: absence of legitimate expectation will absolve the public authority from affording a hearing".

For the purposes of natural justice the question which matters is not whether the claimant has some legal right but whether legal power is being exercised over him to his disadvantage, It is not a matter of property or of vested interests, but simply of the exercise of governmental power in a manner which is fair and considerate.

19. The case relating to the alien students of "Scientology" referred to in the above passage as reported in *Schmidt v. Home Secretary* (1969) 1 All ER 904 There was a College of Scientology (said to be a sort of religion) at Saint Hill Manor near East Grinstead. There were about 100 alien students in the College of whom two were the citizens of the United States. They brought an action against the Home Secretary on behalf of themselves and 50 other alien students for the refusal to renew their permit to stay in United Kingdom for their further period of study. They were permitted "to come to U.K. in order to study at the college of Scientology" and according to them they had a "legitimate expectation" that they will be permitted to complete their courses. Considering this aspect of the case Lord Denning, M.R. stated at page 909:

The speeches in *Ridge v. Baldwin* (1963) 2 All ER 66, show that an administrative body may, in a proper case, be bound to give a person who is affected by their decision an opportunity of making representations. It all depends on whether he has some right or interest, or, I would add, some legitimate expectation of which it would not be fair to deprive him without hearing what he has to say. Thus in *Re : K.(H.) (an infant)*(1967) 1 All ER 226, a Commonwealth citizen had a right to be admitted to this country if he was (as he claimed to be) under the age of 16. The immigration officers were not satisfied that he was under 16 and refused him admission. Lord Parker, C.J. held that, even if they were acting in an administrative capacity, they were under a duty to act fairly and that meant that they should give the immigrant an opportunity of satisfying them that he was under 16. By contrast, in the later case of *R. v. Secretary of State, for the Home Department Ex. P. Aktar Singh*, 25th July, 1967 unreported, a Commonwealth citizen said he wanted to come in so as to marry a girl here. He had no right at all to be admitted. The statute gave the immigration officers a complete discretion to refuse. Lord Parker, C.J, held that they were under no duty to tell him why he was refused admission and were not bound to give him an

opportunity of making representations. If such be the law for a Commonwealth immigrant, it is all the more so for a foreign alien. He has no right to enter this country except by leave; and, if he is given leave to come for a limited period, he has no right to stay for a day longer than the permitted time. If his permit is revoked before the time limit expires, he ought, I think, to be given an opportunity of making representations; for he would have a legitimate expectation of being allowed to stay for the permitted time

20. In *Breen v. Amalgamated Engineering Union (now Amalgamated Engineering and Foundry Workers Union)* and Ors. 1971 1 All ER 1148, the Court of Appeal had to consider the question of legitimate expectation as a ground for relief. The Plaintiff in that case was selected by his fellow-workers as their shop-steward. by the rules of the Plaintiff's Trade Union, the election was subject to approval by the district committee of the Union and a shop-steward could not function until such approval was given. The district committee declined to approve the Plaintiff's selection. Lord Denning, MR in his dissenting judgment at page 1134 stated thus:

Then comes the problem: ought such a body, statutory or domestic, to give reasons, for its decision or to, give the person concerned a chance of being heard? Not always, but sometimes. It all depends on what is fair in the circumstances. If a man seeks a privilege to which he has no particular claim such as an appointment to some post or other--then he can be turned away without a word. He need not be heard. No explanation need be given: see the case cited in *Schmidt v. Secretary of State for Home Affairs* (1969) 1 All ER 904. But, if he is a man whose property is at stake, or who is being deprived of his livelihood, then reasons should be given why he is being turned down, and he should be given a chance to be heard. I go further. If he is a man who has some right or interest, or some legitimate expectation, of which it would not be fair to deprive him without a hearing, or reasons given, then these should be afforded him, according as the case may demand. The giving of reasons is one of the fundamentals of good administration. Again take *Padfield's* case (1963) 1 All ER 694. The dairy farmers had no right to have their complaint referred to a committee of investigation, but they had a legitimate expectation that it would be. The House made it clear that if "the Minister rejected their request without reason, the court might infer that he had no good reason : and, that if he gave a bad reason, it might vitiate his decision.

The learned Judge came to the conclusion that the District Committee had wrongly refused to approve the Plaintiff's selection as a shop steward. The other learned Law lords Edmund Davies and Megaw LJ., however, found that the District Committee had acted fairly and hence dismissed the appeal.

21. In a "later case in *Re : Liverpool Taxi Owners' Association* (1972) 2 All ER 589, the question arose whether the Taxi Owners' Association had a right to be heard before the number of cabs to be licenced is to be increased contrary to an assurance earlier given to them. Lord Denning, MR. stated at page 594:

First I would say this : when the corporation consider applications for licences under the Town Police Clauses Act 1847 they are under a duty to act fairly. This means that they should be ready to hear, not only the particular applicant, but also any other persons or bodies whose interests are affected.

22. The question came up again before the Chancery Division in *McInnes v. Onslow Fane and Anr.* (1978) 3 All ER 211, where the Plaintiff was refused a boxer Manager's licence, Megarry V.C. stated at page 218:

It seems plain that there is a substantial distinction between the forfeiture cases and the application cases. In the forfeiture cases, there is a threat to take something away for some reason; and in such cases, the right to an unbiased tribunal, the right to notice of the charges and the right to be heard in answer to the charges (which, in *Ridge v. Baldwin*, Lord Hodson said were three features of natural justice which stood out) are plainly apt. In the application cases, on the other hand, nothing is being taken away, and in all normal circumstances there are no charges, and so no requirement of an opportunity of being heard in answer to the charges. Instead, there is the far wider and less defined question of the general suitability of the applicant for membership or a licence. The distinction is well-recognised, for in general it is clear that the Courts will require natural justice to be observed for expulsion from a social club, but not on an application for admission to it. The intermediate category, that of the expectation cases, may at least in some respects be regarded as being more akin to the forfeiture cases than the application cases; for although in form there is no forfeiture but merely an attempt at acquisition that fails, the legitimate expectation of a renewal of the licence or confirmation of the membership is one which raises the question of what it is that has happened to make the applicant unsuitable for the membership or licence for which he was previously thought suitable.

23. The case in *Cinnamond and Ors. v. British Airports Authority* (1980) 2 All ER 368, related to the refusal of entry to six minicab drivers into the Airport premises. After referring to a passage in *Wade on Administrative Law*, 4th Bdn. 1977 p. 435) relating to the need of a fair hearing in the matter of a discretionary administrative decision, Lord Denning MR. stated at page 374:

I can see the force of that argument. But it only applies when there is a legitimate expectation of being heard. In cases where there is no legitimate expectation, there is no call for a hearing...

and further observed at the 1 same page:

Applying those principles, suppose that these car-hire drivers were of good character and had for years been coming into the airport under an implied licence to do so. If in that case there was suddenly a prohibition order preventing them from entering, then it would seem only fair that they should be given a hearing and a chance to put their case.

24. The Privy Council in *Attorney General of Hong Kong v. Ng Yuen Shiu* (1983) 2 All ER 346, considered the question of legitimate expectation as a ground for relief. The Government of Hong Kong had followed what they called the "reached base" policy under which illegal immigrants from China were not repatriated if they managed to reach the urban areas without being arrested. The Government later announced that the "reached base" policy would be discontinued forthwith and on the same day issued the Immigration Ordinance 1980 amending an earlier ordinance of 1971 requiring all residents of Hong Kong to carry proof of identity, prohibiting the employ meet of illegal immigrants and conferring on the Director of Immigration a power to order removal. The change of policy was followed by a series of television announcements explaining that all illegal immigrants from China would be repatriated. The announcements related only to illegal immigrants from China and not to immigrants of Chinese origin who had entered Hong Kong from Macau. In the case before the Privy Council, the Respondent had entered Hong Kong illegally in 1976 and he remained undetected till 1980. The television announcements had stated that the illegal immigrants should be interviewed and each case would be treated on its merits. The Respondent reported to an Immigration Officer and after being interviewed was detained until a removal order was made against him by the Director of Immigration. His appeal to the Immigration Tribunal was dismissed. The Court of appeal of Hong Kong granted him an order of prohibition against the Director, prohibiting the execution of the removal order until an opportunity had been given to him to put the circumstances of his case before the Director. In appeal at the instance of the Attorney-General of Hong Kong, the Privy Council held that the Respondent is entitled to an opportunity of being heard and to explain his case on humanitarian grounds and on satisfaction on which he might have been allowed to remain in Hong Kong. Lord Fraser on behalf of the Board stated at page 350:

The narrower proposition for which the Respondent contended was that a person is entitled to a fair hearing before a decision adversely affecting his interests is made by a public official or body, if he has "a legitimate expectation" of being accorded such a hearing, the phrase "legitimate expectation" in this context originated in the judgment of Lord Denning M.R. in *Schmidt v. Secretary of State for Home Affairs* (1969) 1 All ER 901 : (1969) 2 Ch. 149 at 170. It is in many ways an apt one to express the underlying principle, though it is somewhat lacking in precision. In *Satemi v. Minister for Immigration and Ethnic Affairs* (No. 2) (1977) 14 ALR 1 at 7 Barwick C.J., construed the word "legitimate" in that phrase as expressing the concept of "entitlement or recognition by law". So understood, the expression (as the learned Chief Justice rightly observed) "adds little if anything, to the concept of a right". With great respect to the learned Chief Justice, their Lordships consider that the word "legitimate" in that expression falls to be read as meaning "reasonable". Accordingly "legitimate expectations" in this context are capable of including expectations which go beyond enforceable legal rights, provided they have some reasonable basis : See

R. v. Criminal Injuries Compensation Board, ex p. Lain (1967) 2 All ER 770; (1967) 2 QB 864. So it was held in R. v. Hull Prison Board of Visitors, ex. p. St. Germain, (No. 2)(1979) 3 All ER 545; (1979) 1 WLR 140, 1401 that a prisoner is entitled to challenge by judicial review, a decision by a prison board of visitors, awarding him loss of remission of sentence, although he has no legal right to remission, but only a reasonable expectation of receiving it.

25. Lord Fraser in the decision of the House of Lords in Council of Civil Service Unions and others v. Minister for the Civil Service (1984) 3 All ER 935 stated at page 943:

But even where a person claiming some benefit or privilege has no legal right to it, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so, the courts will protect his expectation by judicial review as a matter of public law. This subject has been fully explained by Lord Diplock in O'Reilly v. Mackman (1982) 3 All ER 1124 : II (1983) ACC 237 and I need not repeat what he has so recently said. Legitimate, or reasonable, expectation may arise either from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue.

Lord Diplock in the same case stated at page 951:

Indeed, where the decision is one which does not alter rights or obligations enforceable in private law but only deprives a person of legitimate expectations, "procedural impropriety" will normally provide the only ground on which the decision is open to judicial review. But in any event what procedure will satisfy the public law requirement of procedural propriety depends on the subject-matter of the decision, the executive functions of the decision maker (if the decision is not that of an administrative tribunal) and the particular circumstances in which the decision came to be made.

Lord Roskill on the question of legitimate expectation stated at page 954:

The principle may now said to be firmly entrenched in this branch of the law. As the cases show, the principle is closely connected with a right to be heard". Such an expectation may take many forms. One may be an expectation of prior consultation. Another may be an expectation of being allowed time to make representations, especially where the aggrieved party is seeking to persuade an authority to depart from a lawfully established policy adopted in connection with the exercise of a particular power because of some suggested exceptional reasons justifying such a departure.

26. R. v. Secretary of State for the Home Department, ex parte Khan (1985) 1 All ER 40, related to the case where a Pakistani immigrant in the U.K. wanted to adopt a child. A Home Office circular gave guidance for adoption of a child from abroad and it stated that although the immigration rules do not permit a foreign child to enter U.E. for the purpose of adoption, the Secretary of State in

exceptional circumstances may exercise the discretion to allow the child to enter for adoption if certain specified criteria are met. The Secretary of State in that case did not enquire into the criteria laid down but refused entry of the child by applying a different criteria. Parker L.J. in the Court of Appeal stated at page 48:

I have no doubt that the Home Office letter afforded the applicant a reasonable expectation that the procedures it set out, which were just ascertain in their terms as the question and answer in Mr. Ng's case, would be followed, that if the result of the implementation of those procedures satisfied the Secretary of State of the four matters mentioned a temporary entry clearance certificate would be granted and that the ultimate fate of the child would then be decided by the adoption Court of this country. I have equally no doubt that it was considered by the department at the time the letter was sent out that if those procedures were fully implemented they would be sufficient to safeguard the public interest. The letter can mean nothing else. This is not surprising. The adoption Court will apply the law of this country and will thus protect all the interests which the law of this country considers should be protected. The Secretary of State is, of course, at liberty to change the policy but in my view, vis-a-vis the recipient of such a letter, a new policy can only be implemented after such recipient has been given a full and serious consideration whether there is some overriding public interest which justifies a departure from the procedures stated in the latter.

Dunn L.J. agreeing with Lord Parker, stated at page 52:

The categories of unreasonableness are not closed, and in my Judgment an unfair action can seldom be a reasonable one. The cases cited by Parker 1 J. show that the Home Secretary is under a duty to act fairly, and I agree that what happened in this case was not only unfair but unreasonable. Although the circular letter did not create an estoppel, the Home Secretary set out therein for the benefit of applicants the matters to be taken into consideration, and then reached his decision on a consideration which on his own showing was irrelevant. In so doing in my judgment he misdirected himself according to his own criteria and acted unreasonably.

The same principle is stated by McNeill, J, in *R. v. Secretary of State for Transport ex parte Greater London Council* (1985) 3 All ER 300. The learned Judge follows the decision in *Council of Civil Service Unions and others v. Minister for the Civil Service* (1984) 3 All ER 935 (supra).

27. Taylor, J. in *R. v. Secretary of State for the Home Department, ex parte Ruddock and Ors.* (1987) 2 All ER 518, after referring to the decisions in (1984) 3 All ER 935, *R. v. Secretary of State for Home Department, ex parte Khan* (1985) 1 All ER 40, and the other decisions bearing on the point came to the following conclusion at page 531:

On those authorities I conclude that the doctrine of legitimate expectation in essence imposes a duty to act fairly. Whilst most of the cases are concerned, as Lord Roskill said, with a right to be heard, I do not think the doctrine is so

confined. Indeed, in a case where ex hypothesi there is no right to be heard, it may be thought the more important to fair dealing that a promise or undertaking given by a minister as to how he will proceed should be kept.

28. The principle of these decisions is seen discussed in Garner and Jones Administrative Law, Sixth edition, at pages 147 to 152 and Public Law 1986 pages 252 to 257. An article entitled "Expectations in a Joyless Landscape" in the Modern Law Review 1986, page 685 to 711 has also highlighted the principle of "legitimate expectation".

29. The point arose for consideration before the Supreme Court in a case arising out of the Kerala Education Rules, in State of Kerala and Others Vs. K.G. Madhavan Pillai and Others, In that case it was held that the applicant who had been granted sanction under Rule.2-A of Chapter 5 of the Kerala Education Rules for the opening of new schools or up-grading of existing schools are entitled to the continuance of the statutory procedural stream and to have their applications considered and dealt with under Rules 9 and 11. Quoting with approval the passage from Wade extracted in the earlier part of this judgment the Supreme Court held that having granted sanction to the applicants under Rule 2-A(5) of the Kerala Education Rules, to open/up-grade the schools subject to satisfying the conditions under Rule 9 and obtaining a clearance under Rule 11, it is not open to the Government to stop the procedure mid-stream and cancel the order of sanction on the ground that there is no need for the establishment of new recognised schools, without even giving the applicants an opportunity to put forward their case.

30. The learned Advocate General submits that the concept of "legitimate expectation" demands only fairness in action and that is only an aspect of the principles of natural justice and not of promissory estoppel. He further submits that by mere change in the criteria for selection it cannot be said that there is change in the policy depriving the Petitioners of any of their rights. The Petitioners had acquired no right of being selected but have only a right to apply for being selected and under the changed policy, they still have a right to apply and then compete with the other candidates Even so, the change of policy after the issue of the prospectus was unfair to these candidates and cannot be sustained in law.

31. On the principle laid down in these decisions, we are clearly of the view that the Petitioners having secured very high marks in the qualifying examination had a "legitimate expectation" of selection for admission to the "Engineering Courses on merit basis as held out in the prospectus issued in that behalf. Merit based on the result of P.E.T. cannot therefore be imposed on them without even giving them an opportunity of sustaining the principle held out in the prospectus. The super imposition of P.E.T after the issue of the prospectus is for that reason unfair and is also unsustainable in law.

32. In view of the conclusion we have reached on the points discussed above, it

is not necessary to advert to the other points raised by Advocates Sarvshri D.K. Khanna, Inder Singh, Rajiv Kataria and M.L. Sharma on behalf of some of these Petitioners.

33. For the aforesaid reasons, we direct that the selection for admission for the Engineering Courses in the Regional Engineering College Himachal Pradesh and the RECs. outside the State as well as the nomination of candidates for admission in Engineering Colleges outside the State of H.P. for the session commencing from 1990-91 be held in accordance with the prospectus issued in that behalf reckoning merit based on the marks obtained in Physics, Chemistry and Mathematics in the qualifying examination. The writ petitions are allowed. The parties will bear their respective costs.