

IN THE SUPREME COURT OF INDIA
ORIGINAL WRIT JURISDICTION
[Order XXXVIII of SCR, 2013]
WRIT PETITION (C) NO. 1410 OF 2020

IN THE MATTER OF :

RACHNA AND ORS.	...	PETITIONER
	vs.	
UNION OF INDIA AND ANR.	...	RESPONDENT

**COUNTER AFFIDAVIT ON BEHALF OF THE
RESPONDENT NO. 1 - UNION OF INDIA**

I, Udai Bhan Singh, aged 53 years, working as Under Secretary in the Department of Personnel and Training, Government of India, do hereby solemnly affirm and state as follows:

1. That in my official capacity I am acquainted with the facts of these cases, I have perused the record and am competent and authorized to swear this affidavit on behalf of the Union of India, Respondent No. 1.
2. That the contents of the present Writ Petition (Civil) filed by the Petitioner (hereinafter referred to as “**the present WP**”) has been read over to me in a vernacular language and I have understood the contents thereof, save and except what is specifically admitted herein, no part in the present WP which is not expressly dealt with shall be deemed to be admitted and I crave Leave to those paragraphs during the course of argument as may be necessary.
3. I hereby deny and dispute all the facts stated, contentions raised and grounds urged in the present Writ Petition except those which are specifically

and unequivocally admitted in this reply. That the Answering Respondent is filing the instant Counter Affidavit to the present WP to bring on record correct facts and circumstances of the case.

4. Before advertizing to the petitions served so far in the present subject matter, the Respondent seeks to place a background in order to apprise the Hon'ble Court of the correct sequence of events.

BACKGROUND

5. It is submitted that the timeline of events is summarized as hereinbelow:

DATE	EVENTS
12.02.2020	DoPT notified CSE-2020 Rules in the Gazette of India. Subsequently, examination Notice for CSE-2020 was also released by UPSC. <u>Preliminary Examination of the Civil Services Examination-2020 was scheduled on 31.05.2020.</u>
04.05.2020	Vide press release, UPSC deferred the CS (Preliminary) Examination scheduled for 31.05.2020.
20.05.2020	UPSC informed that a revised schedule of examinations will be issued in its next meeting to be held on June 5, 2020 as it was not possible to resume examinations and interviews.
June 1-30	Unlock 1.0 was effected vide guidelines issued by the Ministry of Home Affairs, pursuant to which, inter-alia, Inter-state travel was allowed.
05.06.2020	UPSC held a special meeting to review the prevailing unprecedented circumstances due to the outbreak COVID-19 pandemic. Taking notice of the opening of lockdown and

	progressive relaxations being announced by the Central Government and various States across the country, the Commission issued a revised schedule of Examinations/ Recruitment Tests ('RTs'). Importantly, revised schedule indicated date for CS (Preliminary) Examination-2020 as 04.10.2020.
Between July 1-31 01.07.2020	Unlock 2.0 was effected vide guidelines issued by the MHA. Notice for the candidates to submit revised choice of Centre for CS (Preliminary) Examination was issued. The window of submitting the revised choice of centres by the candidates was operational in two phases i.e., 7th-13th July, 2020 (06.00 PM) and 20th-24th July, 2020 (06.00 PM) respectively.
Between August 1-31	Guidelines for Unlock 3.0 were issued by the MHA. Inter-alia, the night curfews were stopped and all inter and intrastate travel and transportation was permitted.
Between September 1-30 28.09.2020	Guidelines for Unlock 4.0 were issued by the MHA, pursuant to the same, inter-alia, Metro Rail was allowed to resume operations in a graded manner from September 7 th 2020. Religious, entertainment, political, sports, academic functions and gatherings of up to 100 people were allowed. First hearing in WP (C) 1012/2020 titled Vasireddy Govardhana Sai Prakash & Others vs UPSC & Others before the Apex Court regarding postponement of Civil Services (Preliminary) Examination-2020 from its scheduled date on 04.10.2020.

30.09.2020	The Hon'ble Supreme Court pronounced the Judgment in the WP (C) 1012/2020, allowing UPSC to conduct the CS (Preliminary) Examination-2020 on its scheduled dated, i.e., 04.10.2020. The Hon'ble Supreme Court inter-alia directed the Government of India to explore the possibility of providing one more attempt to such candidates, for whom CSE-2020 was the last attempt, with corresponding extension of age limit.
Between October 1-31	Guidelines for Unlock 5.0 were issued by the MHA. Pursuant to the same, inter-alia, Cinema halls, that had remained closed all-along, reopened from October 15 th 2020, with 50 per cent of their seating capacity.
04.10.2020	CS (Preliminary) Examination-2020 conducted by UPSC, under all the COVID-19 safety protocols. A total of 4,86,952 candidates appeared in the Examination.
23.10.2020	The results of the CS (Preliminary) Examination-2020 are declared.
26.10.2020	The Petitioners approach this Hon'ble Court and file the present petition.

SUBMISSIONS IN VIEW OF THE ORDER DATED 30.09.2020 PASSED BY THIS HON'BLE COURT

6. At the outset, it is curious to note that the Petitioners, who participated in the examination with open eyes, only approached this Hon'ble Court after the results of the examination was declared. Be that as it may, it is submitted the UPSC made all the necessary arrangements for the conduct of CS (Preliminary) Examination-2020 on 04.10.2020, in a safe and efficient manner adhering to all

the COVID-19 safety protocols issued by the Government of India from time to time.

7. It is pertinent to note that UPSC further gave an option to the candidates to change their centre for CS (Preliminary) Examination-2020, to cater to candidates who would have moved to a different location owing to the COVID-19 pandemic and so such candidates could appear in the Examination. A total of 4,86,952 candidates appeared in the CS (Preliminary) Examination-2020 on 04.10.2020. That the UPSC left no stone unturned in their pursuit to accommodate for the means and interests of the candidates.

8. It is further submitted that the contention by the petitioners that their preparation was hampered due to the stress caused by the prevailing COVID-19 pandemic, does not hold weight as the UPSC had already given extra time to the candidates by postponing the CS (Preliminary) Examination-2020 from 31.05.2020 to 04.10.2020. Furthermore, these conditions would have affected every candidate at the examination in a similar way, thus still maintaining a balance amongst all the candidates. It is respectfully submitted that the Unlock guidelines had also been issued by the MHA in the 1st week of June-2020 wherein gradual relaxations in restrictions were made. In October-2020, 5th Phase of Unlock was in effect, resulting in removal of most of the restrictions with respect to movement of public. Therefore, in view of the same, the contention put forth by the Petitioner that appearing in the examination was not possible due to the ongoing COVID-19 restrictions, does not hold any ground whatsoever.

9. It is further submitted that giving an additional attempt or relaxation in age for some candidates would amount to extending differential treatment to similarly placed candidates at the examination. It may be noted that providing an extra attempt could further have a cascading effect by creating a ground for

challenge on part of those candidates who have already appeared for the CS (Preliminary) Examination-2020. It is submitted that other non-final attempt candidates, who undertook the examination this year without any murmur of discontent, would disadvantageously placed in future examinations if the relief as prayed for by the Petitioners is granted as it would enable vast number of experienced candidate [who have availed more time to prepare for the examination], to participate in the examination again thereby making the future examination excessively competitive. It is submitted that such other non-final attempt candidates would therefore have a legitimate grievance against such participation as their chances to be selected in such future examination would be seriously jeopardized. Further, it is submitted that such other non-final attempt candidates, may in the future seek exemption from the 2020 examination being counted as an attempt at all. Therefore, any relief to the Petitioner, apart from being meritless, would also result seriously prejudicing other candidates in the future. It is therefore respectfully submitted that accommodating the present Petitioners would create a cascading effect detrimental to the overall functioning and *level playing field* necessary to be provided in any public examination system.

10. It is submitted that the present Petitioner, after willingly taking part in the examination, and participating in the process with open eyes, and critically after the declaration of results of the Prelims, sought to challenge the process and seek an exemption for the next year. It is submitted that as indicated above, apart from having a cascading effect, the same will lead un-leveling of the playing field for the prospective candidates that too after the Petitioner have participated in the process willingly. In this regard, the Hon'ble Supreme Court

has observed in the case of **Nitesh Kumar Pandey v. State of Madhya Pradesh (2020) 4 SCC 70**, as under:

“15. ...that the person who has acceded to a position and participated in the process cannot be permitted to approbate and reprobate. It is a norm that if a person/candidate having taken note of a requirement in the notification and even if it is objectionable does not challenge the same but despite having knowledge of the same participates in the said process and takes a chance, on failing in the process such person/candidate cannot turn around and assail the same.”

11. Further, the Hon’ble Apex Court, referred to the ratio laid down by this Hon’ble Court in **Ashok Kumar v. State of Bihar (2017) 4 SCC 357 : (2017) 1 SCC (L&S) 822** wherein the law in this regard, on the said subject was crystallised keeping in view the ratios laid down by this Hon’ble Court, it was inter-alia observed:

“In Chandra Prakash Tiwari v. Shakuntala Shukla [Chandra Prakash Tiwari v. Shakuntala Shukla, (2002) 6 SCC 127 : 2002 SCC (L&S) 830], this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the process was unfair or that there was a lacuna therein, merely because the result is not palatable.”

“...having failed to raise any objection to the selection process, it was held that the appellants were estopped from turning around and challenging the selection once they were declared unsuccessful. In taking this view, the Division Bench has relied upon the judgments of this Court in: (i) Marripati Nagaraja v. State of A.P. [Marripati Nagaraja v. State of A.P., (2007) 11 SCC 522 : (2008) 1 SCC (L&S) 68] ; (ii) Dhananjay Malik v. State of Uttaranchal [Dhananjay Malik v. State of Uttaranchal, (2008) 4 SCC 171 : (2008) 1 SCC (L&S) 1005 : (2008) 3 PLJR 271] and (iii) Amlan Jyoti Borooah v. State of Assam [Amlan Jyoti Borooah v. State of Assam, (2009) 3 SCC 227 : (2009) 1 SCC (L&S) 627].”

12. Moreover, in the case of **Union of India v. S. Vinodh Kumar** [**Union of India v. S. Vinodh Kumar**, [(2007) 8 SCC 100 : (2007) 2 SCC (L&S) 792] the Hon'ble Apex Court inter-alia observed:

“18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same. (See Munindra Kumar v. Rajiv Govil [Munindra Kumar v. Rajiv Govil, (1991) 3 SCC 368 : 1991 SCC (L&S) 1052] and Rashmi Mishra v. M.P. Public Service Commission [Rashmi Mishra v. M.P. Public Service Commission, (2006) 12 SCC 724 : (2007) 2 SCC (L&S) 345] .)”

13. This Hon'ble Court in the case of **Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors** 1986 Supp SCC 285, inter-alia laid down that when a candidate appeared at an examination without protest and was subsequently found to not be successful in the examination, in such a case, question of entertaining a petition challenging the said examination would not arise. This view taken by the Hon'ble Apex Court was reiterated in **Chandra Prakash Tiwari v. Shakuntala Shukla**, (2002) 6 SCC 127 : 2002 SCC (L&S) 830 wherein it was observed:

“32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status — the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr Dhavan pertaining to the doctrine of estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in Om Prakash Shukla v. Akhilesh Kumar Shukla [1986 Supp SCC 285 : 1986 SCC (L&S) 644] a three-

Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise.”

14. It is important to note that the aforesaid ratio laid down in ***Om prakash Shukla v. Akhilesh Kumar Shukla and Ors.*** 1986 Supp SCC 285 stands further followed by a later decision of this Court in ***Madan Lal v. State of J&K*** [(1995) 3 SCC 486] wherein this Court stated as below:

*“9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the 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 the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla v. Akhilesh Kumar Shukla* [1986 Supp SCC 285 : 1986 SCC (L&S) 644] it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.*

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be

unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.”

Thereafter, to the question of whether any estoppel would apply owing to the conduct of the candidates, this Hon’ble Court further observed that *“the law seems to be well settled that in the event a candidate appears at the interview and participates therein, 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 there was some lacuna in the process.”*

15. It is submitted that in this regard, specifically during the COVID-19 pandemic, it is relevant to note that this Hon’ble Court vide order dated 17.08.2020 in Writ Petition(s)(Civil) No(s). 812/2020 titled as *Sayantan Biswas & Ors v. National Testing Agency & Ors.*, declined to entertain a plea seeking the postponement of the National Eligibility cum Entrance Test (NEET) and Joint entrance Examination (JEE) slated in September. The Hon’ble Apex expressed its concerns over intervening in the matters pertaining to examinations and their conduct. Further, inter-alia this Hon’ble Court stressed on the fact that if the Court can function in a safe and secure manner on a daily basis during this pandemic, then, so can exams be conducted in a similar manner. Thus, affirming

the stance of the present Respondent No. 1 that owing to the adherence with all the COVID -19 safety protocols, UPSC had administered for a safe, secure and efficient conduct of the contested examination herein. A copy of the order dated 17.08.2020 in Writ Petition(s)(Civil) No(s). 812/2020 titled as *Sayantan Biswas & Ors v. National Testing Agency & Ors.* is attached herewith as **Annexure R – 1.**

16. In light of the above, it is therefore submitted that the said petitions are liable to be dismissed by this Hon'ble Court. I further submit that the Union of India reserves the right to file a more detailed affidavit with the leave of this Hon'ble Court, if necessary, at a later stage as the present affidavit has been filed in the limited time available with the Respondent.

DEPONENT

(उदय भान सिंह)
(UDAI BHAN SINGH)
अवर सचिव / Under Secretary
कार्मिक एवं प्रशिक्षण विभाग
Deptt. of Personnel & Trg.
भारत सरकार / Govt. of India

VERIFICATION

Verified at New Delhi on this day of January, 2021, that the contents of the above affidavit are true and correct to my knowledge and belief derived from the official records. No part of the above affidavit is false and nothing material has been concealed there from.

DEPONENT

(उदय भान सिंह)
(UDAI BHAN SINGH)
अवर सचिव / Under Secretary
कार्मिक एवं प्रशिक्षण विभाग
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