(1967) 10 DEL CK 0020

Delhi High Court

Case No: Letter Patent Appeal No. 68 of 1967

Registrar of Delhi University		APPELLANT
	Vs	
Ashok Kumar Chopra and Another		RESPONDENT

Date of Decision: Oct. 9, 1967

Citation: (1968) ILR Delhi 364 Supp : (1968) ILR Delhi 364

Hon'ble Judges: S.K. Kapur, J; M.K.M Ismail, J

Bench: Division Bench

Advocate: A.B. Lal, R. Dayal and S.W. Khurana, for the Appellant;

Judgement

M.M. Ismail, J.

(1) These three appeals under Clause 10 of the Letters Patent are against the common judgment dated 26/5/1967 of Tatachari, J. allowing three writ petitions filed by the first respondent in each of these three Letters Patent Appeals. This judgment will dispose of all the three appeals. Shri Chittaranjan Das Sharma, the first respondent in L.P. Appeal No. 70 of 1967 and the petitioner in Civil Writ petition No. 231 of 1967 passed the Secondary School Certificate Examination in March 1963 conducted by the Gujarat Secondary School Certificate Examination Board, Baroda. In July, 1965, he applied for admission in Deshbandhu College, New Delhi, for studying in B.A. (Pass Course) of the University of Delhi. In his application dated 7/7/1965 in the prescribed form, he furnished all the required particulars including the examination passed by him. The Principal of the College accepted his application and admitted him provisionally to the B.A. First year class on his payment of fees subject to the approval of the University. On 6/9/1965, another application, in the prescribed form, practically embodying the same particulars which were furnished in the application dated 7/7/1965, was obtained from him and was forwarded to the University by the College. The University alltoted the student Db (E) 3457 as his enrolment number and fixed 10/11/1965 as the date of his enrolment in the University and a printed slip containing these particulars signed by the Registrar of

the University was sent to the Principal of the College. On receipt of the said slip, the College authorities entered the enrolment number in the prescribed column in the Admission Register of the College against the name of the student. Shri Chittaranjan Das Sharma attended the classes of the First year of the B.A. (Pass Course). paid his fees regularly, appeared in the examination conducted by the College at the end of the First year in April, 1966 and passed the said examination and was promtoed to the second year of the said Course. When he was pursuing the second year of his Course, on 5/8/1966, the Principal issued a letter to him informing him that he was not eligible for admission to the First year of the B.A. (Pass Course). Subsequently, correspondence passed between the student and the Principal and the University authorities and it is unnecessary to refer to them in detail for the purpose of these appeals. However, it appears from the said correspondence that the ground for treating Shri Sharma as not eligible for admission to the First Year of the B.A. (Pass Course) of the Delhi University was that the S.S.C examination from Gujarat (Baroda) passed by him had been recognised by the Delhi University as equivalent to metriculation examination of the Delhi University only, whereas the minimum qualification for admission to the First year of the B.A. (Pass Course) was the passing of Higher Secondary or an equivalent examination with at least 40 % marks in the aggregate. The representations made by Shri Sharma failed and his admission was cancelled. It is thereafter, he filed Civil Writ petition No. 231 of 1967 on the file of this Court challenging the cancellation of his admission.

(2) Shri Yashoda Nandan Sharma, the first respondent in Lpa No. 69 of 1967 and the petitioner in Civil Writ Petition No. 232 of 1967 had passed the Secondary School Certificate examination in March 1965 conducted by the Gujarat Secondary School Certificate Examination Board, Baroda. He also applied for admission into the Deshbandhu College, New Delhi, for stuyding in B.A. (Pass Course) of the Delhi University. In his application dated 29/6/1965, in the prescribed form, he furnished all the required particulars including the examination passed by him. The Principal of the College provisionally admitted him to the First year of the B.A. Class on payment of his fees and subject to the approval of the University. The second application form with the necesary particulars was obtained from him on 31/8/1965 by the Colleges and was forwarded to the University. As in the case of Shri Chittaranjan Das Sharma, in this case also, the second application form practically contained all the particulars contained in the first application form dated 29/6/1965, including the examination passed by him. In this application form on the first page, under the heading ''University Enrolment Number ''DB(C) 3204'' was written but the enrolment number was not specified in the printed slip nor the date of the said enrolment was filled in that slip. Shri Yashoda Nandan Sharma paid his college fees regularly, attended the classes in First year B. A. (Pass Course) and appeared in the examination at the end of the year held in April 1966. However, he failed in it and there after continued his studies again in the same class for the succeeding year. While so, on 15/6/1966, the Principal of the College issued a notice to him staling

that his admission was cancelled with immediate effect as the University had not approved of his admission since the S.S.C. examination of the Gujarat Board had not been recognised as equivalent to the Higher Secondary School examiliation by the University. There was correspondence between Shri Yashoda Nandan Sharma and the College and the University authorities and representations by him but the student did not get any relief. Thereafter, he filed Civil Writ petition No. 232 of 1967 on the file of this Court challenging the cancellation of his admission to the College.

(3) Shri Ashok Kurnar Chopra, the first respondent in Lpa No. 68 of 1967 and the petitioner in Civil Writ petition No.321 of 1967 had passed the SSC. examination of Poona Board held in March 1963 and on 29/6/1965 he applied to the Delhi College (Evening Course), Ajmere Gate, Delhi, for studying in the B.A. (Pass Course) of the University of Delhi. In the application, in the prescribed form, he furnished all the necessary particulars including the examination passed by him. The Principal of that College admitted him provisionally to the B.A. Course subject to confirmation or rejection by the University. A second application form dated 21/7/1965 was taken from Shri Chopra by the College which contained practically the same particulars which were furnished in the application dated 29/6/1965. This application form was also forwarded to the University. Here again, though on the first page of the application form under the heading "Universify Enrolment Number", ''O (E) 7326'' was given, the other portions were not filled in by the University and the printed slip also was not filled in by the University. (This form was not required to be produced before the learned Judge and was not produced before him, but we required it to be produced before us and the same was produced and we have pursued it). Shri Chopra regularly paid his College fees, attended the classes of the First year of the B.A. (Pass Course), appeared in the examination held at the end of the first year in April 1966 and passed the said examination. He was promtoed to the second year class during the succeeding year and he was studying in that class. While so. on 25/11/1966, the Principal of the College served a notice on him staling that the University of Delhi had objections to his provisional admission into the College being confirmed as the S.S.C. examination of Poona Board was not recognised as equivalent to the Higher Secondary examination. In his case also, correspondence ensued between the student and the college and the University authorities but ultimately there was no decision by any of the authorities, in favor of the student. It is under those circumstances he filed the Civil writ petition No. 321 of 1967, challenging the action of the authorities cancelling his admission.

(4) All the three writ petitions were heard together by Talachari. J. and as pointed out already, he allowed all the three writ petitions by a judgment and order dated 26/5/1967. Tatachari. J. on the basis of the materials placed before him, held that in the case of Shri Chittaranjan Das Sharma, the University had passed orders enrolling him as a student of the University and gave him No. ''DB (E) 3457'' as his enrolment number and 10/11/1965 as his date of enrolment while in the case of Shri Yashoda Nandan Sharma and Shri Ashok Kumar Chopra, no such enrolment number and

date of enrolment were assigned by the University, even though a number was given on the top of the first page of the form under the heading "University Enrolment Number" as that number was only a Seriall number and that Seriall number according to the practice of the University would become the enrolment number only if the same had been incorporated in the printed slip of enrolment form after verification of the particulars and in the case of the last two, no such incorporation had taken place. The learned Judge relying upon the decision of the Supreme Court in Harbhajan Singh v. Varam Singh and others held that the subsequent cancellation of the admission of Shri Chittaranjan Das by the University amounted to the University reviewing its earlier order and it had no power or jurisdiction to review or cancel that order since the University had not been conferred with such a power and, consequently, the cancellation of the admission of Shri Chittaranjan Das was liable to be quashed under Article 226 of the Constitution. With regard to all the three students, the learned Judge came to the conclusion that :-

"SILENCE and the inaction on the part of the University authorities for such a long time and particularly when the petititioner-students were all the time studying, paying fees and appearing and succeeding in the examinations held at the end of the first year (in the case of two of them) amounts to representation by conduct on the part of the University authorities that the admissions of the petitioner-students were approved by them" and

"THE only inference that can be drawn is that the University authorities by their conduct in remaining silent, held out or represented to the concerned students that their admissions were approved by the University" and consequently, the doctrine of legal estoppel, as laid down in Section 115 of the Evidence Act, applied to the cases with the result that it was not open to the University to put forward the contention that the University did not approve of the admission of the three students and they were not eligible for such admission.

The learned Judge also took the view that :-

"IN approving or disapproving the provisional admissions to students, the Academic Council determines questions affecting the rights and careers of the students" and, Therefore,

"THE Academic Council, in exercising its afore- said quasi-judicial function, has to follow the principles of natural justice, and should give adequate opportunity to the students to present their case before the provisional admissions are disapproved or cancelled. In the present cases, admittedly, no such opportunity was given to the petitioner-students. The decisions of the Academic Council in the three cases were Therefore vitiated."

(5) In this view, the learned Judge, as pointed out already, allowed the three writ petitions and the Delhi University has preferred these appeals against the said

decision.

(6) We must point out at this stage that while the writ petitions were pending, under orders of the Court, students were permitted to write the examination held in April 1967 and since Shri Chittaranjan Das and Shri Ashok Kumar Chopra passed the Second year examination, they are now studying in the third year of the three year B.A. Course, while Shri Yashoda Mandan Sharma who again failed in the First year examination is still continuing in the First year of the Course.

(7) Before we consider the contentions advanced before us, it is desirable to set out the relevant statutory provisions. The University of Delhi has been constituted as a body corporate under the provisions of the Delhi University Act, Act No. Viii of 1922. Section 17 of the Act enumerates the authorities of the University and the Academic Council is one of them. The Court, which is one of the authorities enumerated in Section 17 of the Act, is authorised to make statutes, u/s 29 of the Act By Section 30 of the Act, the Academic Council is empowered to make Ordinances, subject to the provisions of the Act and the statutes, providing for the matters mentioned therein, one of which is the admission of students to the University and their enrolment as such [Section 30 Clause (a)]. Statutue No. 8 of the Statutes contained in Schedule I to the Act provides, infer alia, that the Academic Council shall have powers to appoint committees for admission to the University. In exercise of the powers conferred on the Academic Council by Section 30 of the Act, the Academic Council has made Ordinances and clause 1 of Ordinance I is as follows:

"SUBJECT as hereinafter provided, no person shall be eligible for admission to the University unless he has passed the Intermediate Examination of an Indian University, or the Higher Secondary Examination of the Board of Higher Secondary Education, Delhi, or an examination recognised as equivalent to either of these examinations by the Academic Council, from time to time, and possesses such further qualifications as may be prescribed by the Ordinances."

(8) This is followed by a proviso which is not relevant for the purpose of these cases. Clauses 1(1) of Ordinance Ii dealing with the procedure for admission, provides for the constitution of several admission committees. Clause 2(1) of the said Ordinance Ii provides :-

"SUBJECT as hereinafter provided, the Principal of a College may register students applying for admission on production of "certificate showing that they possess the prescribed qualifications."

Clause 2(2) states that the applications for registration shall be made on a form to be supplied by the Principal of the College. Clause 4(1) of Ordinance Ii states:-

"THE said Committees (Admission Committees) shall determine the principles on which admissions are to be made subject to the review of the Standing Committee of the Academic Council as mentioned hereinafter. The said committees shall

finalise the cases of admission except those which are to be referred to the Standing Committee on account of any special factors."

(9) Clause 1(2) states that the Science Courses Admission Committee shall also ascertain, as soon as may be, the number of places, whether for Pass or for Honours courses, likely to be available in the Departments of the Faculty of Science, and shall ntoify the Principals of Colleges accordingly. Clause 5 provides that there will be a Standing Committee of the Academic Council which will:-

(I) review and finalise cases of admission as are specially referred to them by the different Courses Admission Committees, on account of any special factors or considerations involved in particular cases;

(II) review some time in November each year the principles adopted by the various Courses Admission Committees for admission to the courses concerned and to co-ordinate, wherever necessary, the admission procedure adopted by these Committees.

One further Ordinance that has to be noticed is Ordinance X-A and the same is as follows :-

"THE Academic Council may, in exceptional cases, grant exemption from the operation of any of the Ordinances governing admission of students, the courses to be pursued by them. attendance at lecturers or sessional or other work or the examination of candidates and authorise what is proper to be done instead in such cases, provided that no such exemption and authority shall be deemed to have been granted unless, not less than two-thirds of the members present of the Academic Council vtoed in favor of the mtoion for such exemption and authority made by, or with the written authority of the Vice-Chancellory and

(10) Provided further that this two-thirds majority vtoing for the exemption should not be less than half the ttoal strength of the Academic Council at the time." Before dealing with the contentions of the learned counsel for the appellant, we shall refer to the admitted facts of these cases:

(1) The Secondary School Certificate examination conducted by the Secondary School Certificate Examination Board of Bombay, Poona and the Gujarat Secondary School Certificate Examination of the Gujarat Secondary Certificate Board, Baroda, have been recognised by the University of Delhi, as equivalent to the metriculation examination of an Indian University and not as equivalent to the Higher Secondary examination of the Board of Higher Secondary Education, Delhi.

(2) Neither the application form nor the prospectus issued by the colleges concerned contained particulars as to what examinations were recognised,by the University of Delhi as equivalent to the examination of the Board of Higher Secondary Education, Delhi.

(3) None of the three students made any mis-representation with regard to the examination he had passed at the time when he applied for admission to the First year of the B.A. (Pass Course) in the concerned College, and in the application form, had correctly stated the examination passed by him.

(4) The application forms of the students were scrutinised by the authorities of the College and as a result of such scrutiny the students were admitted provisionally to the First year of the B.A. (Pass Course) of the Delhi University in the respective colleges and they were required to pay their fees and they had paid the fees.

(5) By the time the students were informed that they were not eligible for admission to the First year of the B.A. (Pass Course) by the authorities, they had put in more than one year in the colleges and had paid their fees. As pointed out already, two of them, viz. Chittaranjan Das and Ashok Kumar Chopra had passed the examination conducted by the college at the end of the first year and were promtoed to the Second year of the B.A. (Pass Course) while Yashoda Nandan Sharma though appeared for the said examination did not pass it, and consequently, continued in the same first year of the B.A. (Pass Course) in the succeeding year also.

(6) As stated already, the printed slip in regard to the enrolment of the student to the University was completed, signed by the Registrar and sent to the college concerned, where the particulars were entered in the concemed register maintained by the college with reference to Shri Chittaranjan Das while no such printed slip was filled in or signed or sent in the case of other two. One other circumstance also has to be noticed in this context. The action of the the students in seeking admission in these cases has been explained on the basis that they were genuinely under the impression that the examinations they had passed are equivalent to the Higher Secondary Examination of the Board of Higher Secondary Education, Delhi, and this is confirmed by the action of the Principals in provisionally admitting the students after scrutinising their applications and verifying the particulars furnished therein. Shri Avadh Behari has not controverter this basis, but only contended that it was the duty of the students to find out, before they sought admission, what are the examinations declared by the Academic Council to be equivalent to the Higher Secondary Examination of the Board of Higher Secondary Education, Delhi, and whether the examinations they had passed are amongst them.

(11) It is against the background of these facts, we shall have to deal with the points arising in these appeals. Shri Avadh Behari, appearing for the appellant, challenged the conclusion of Tatachari, J. on all the points. The first point urged by him was that with regard to Shri Chittaranjan Das, it cannot be said that the University had enrolled him so long as the printed slip which was sent by the University to the College authorities had not been handed over by the College Authorities to Shri Chittaranjan Das. We are unable to agree with this contention. Shri Avadh Behari did not bring to our notice any provision in the University Act or the Statutes or Ordinances to that effect. In our opinion, for the purpose of these cases and with

reference to the facts of these cases, we must hold that as soon as the Registrar signed the printed slip of enrolment and dispatched it from the University office, the University enrolled Shri Chittaranjan Das as a student of the University. The second point urged by Shri Avadh Behari was that the learned Judge erred in holding that the University had no jurisdiction to review or cancel the enrolment already made by it and on that ground, the cancellation of such enrolment by the University was beyond the jurisdiction of the University. We are inclined to agree with this contention of the learned counsel. Shri Rameshwar Dial, who appeared for the students, could not bring to our notice any particular provision in the Act or the statutes, or the Ordinances which conferred a power on any of the authorities of the University to pass formal orders enrolling a student to the University. In our opinion, the decision of the Supreme Court in Harbhahan Singh v. Karam Singh & others (1), will apply only to those cases where a statute expressly confers on an authority power to make a judicial or a quasi-judicial order but does not confer on the same authority a power to review the order passed by it earlier. In the absence of any express statutory provision conferring a power to make any order, there is no scope for the contention that there is no other statutory provision conferring a power to review that order. In these cases, the question of the University approving or rejecting an admission made by Principals of the Colleges arises becuase the Principals made only provisional admissions subject to the approval or rejection of the University. In this situation, if we may say so with respect, we are unable to agree with the view of the learned Judge that the University had no power to review or cancel the enrolment once granted by it.

(12) The third point urged by Shri Avadh Behari, the learned counsel for the appellant, was that the learned Judge erred when he held that the action of the University cancelling the provisional admission of the petitioners was vitiated since no notice was given to the students concerned. We may point out here that Shri Rameshwar Dial appearing on behalf of the students did not support the conclusion of the learned Judge on this part of the case and if we may say so, rightly, we agree with the learned Judge that when the University was cancelling or disapproving of the provisional admissions of the students, it had to act objectively and its action was likely to affect seriously the rights and career of the students, and Therefore, it was necessary for the University to give an opportunity to put forward their cases. However, on the admitted facts of the present cases, we do not consider that there is any justification for insisting that an opportunity should have been given to the students. It is admitted as we pointed out already that the examinations passed by the students were not recognised as equivalent to Higher Secondary Examination of the Board of Higher Secondary Education, Delhi, and this was the only ground on which the University declined to give approval to the provisional admission of the students made by the Principals of the respective colleges. In a situation similar to the present one, a Bench of the Madras High Court in Registrar, University of Madras v. Sundma Shetti and others(2) relied on by the learned Judge for his

conclusion, on another part of the case, pointed out that:-

"WE do not see in a case like this what the petitioner could have done if he had been given order, notice or an opportunity to show cause why a mistake made by the University, or some one acting on behalf of the University should not be corrected."

(13) So also, a Bench of the Mysore High Court in Manjunath Annayappu v. Universify of Bangaloie(3) pointed out that the obligation to observe the principles of natural justice of giving notice and hearing the other party, depends upon the facts and circumstances of each case and whether the non-observance of it has resulted in injustice to the other party is a point which will enter into ultimate decision of the case. With reference to the facts of that case, the Bench further pointed out that the facts on the basis of which the petitioner''s admission was cancelled being undisputed and incapable of any Explanation, except on the hyptohesis that the marks-card produced by the petitioner in that case was erroneous, they did not consider that the absence of notice to the petitioner had resulted in an injustice to him. Here also, in the present cases, we fail to see what Explanation the students would have given if they were given notice staling that they were not eligible for admission to the University since the examination passed by them were not recognised as equivalent to the Higher Secondary Examination of the Board of Higher Secondary Education, Delhi, which is an admitted fact.

(14) There remains, then, the principal question elaborately argued before us, viz. the plea of estoppel which has been applied to the present cases by the learned Judge. Shri Avadh Behari challenging the conclusion of the learned Judge on this part of the case put forward three contentions:

(I) that outside Section 115 of the Evidence Act, there is no scope for equitable stoppel;

(II) there can be no estoppel against a statute and

(III) that mere silence or inaction cannot constitute estoppel.

(15) We can easily dispose of the first of the above three. The learned Judge himself, after referring to an observation of the Supreme Court in R. S. Maddanuppa v. Chandramma and ofhers(4) stated that in the view taken by him, the University was estoppel under the provisions of Section. 115 of the Evidence Act and it was unnecessary for him to apply the doctrine of equitable estoppel as such to the facts of the present cases and in his opinion the doctrine of legal estoppel as laid down in Section 315 of the Evidence Act applied to the present cases. The observation referred to is: -

"IN some decisions of the High Courts reference has been made "equitable estoppel", but we doubt whether the Court while determining whether the conduct of & particular party amounts to an estoppel, could travel beyond the provisions of Section .115 of the Evidence Act."

In view of this conclusion of the learned Judge, it is unnecessary to pronounce any concluded opinion whether the students in these cases could be granted any relief on the ground of equitable estoppel. Therefore, the question that will remain is whether the present cases come within the scope of legal estoppel, the general principles of which have been codified in Section 115 of the Evidence Act.

(16) Before we deal with that aspect, we shall dispose of the second contention of the learned counsel that there can be no estoppel against a statute. The same argument was advanced before the learned Judge and the learned Judge has held that the proposition that there can be no estoppel against a statute does not apply to an admission of a student made in violation or breach of the provisions in Ordinance 1. The learned Judge has further held that an act which is ultra virus the statutory provision should be distinguished from an act which is only irregular and that where a statute authorises a body like the Academic Council to do a certain thing under specified circumstances but also empowers that body to grant exemption from complying with the said requirement, any act of that body not in compliance with the said requirement cannot be held to be ultra virus and the proposition that there cannot be any estoppel against a statute can have applicacation and reference only to such acts which are ultra vires. The basis of this conclusion of the learned Judge is that clause 1 of Ordinance I which we have extracted already has prescribed as to who are eligible for admission to the University, but Ordinance X-A in widest terms enables the Academic Council to grant exemption from the operation of any of the Ordinances governing the admission of the students; Therefore the existence of Ordinance X-A makes the admission of students contrary to Ordinance I not an ultra virus act, but only an irregular act.

(17) Before discussing the decisions cited at the Bar, we may point out that there are two answers to the argument of Shri Avadh Behari that to these cases, the proposition that there can be no estoppel against a statute will apply. The first answer is, that as pointed out by the learned Judge, in view of the provisions contained in Ordinance X-A, any admission made contrary to the terms of clause I of Ordinance I cannot be considered to be an ultra virus act, and Therefore, the proposition has no application. The second answer is, that the doctrine will apply only with reference to the pleading of the University that it had not approved the provisional admission made by the Principals. The reason is that once the University had kept quiet and had not sent any intimation to the students concerned that it had not confirmed the provisional admission made by the Principals of the Colleges, that silence and inaction will amount to a representation that the University had approved the admission of the students concerned. It is the fact that the University had not approved the admission of the students in question that the University is estopped from denying. If only the University is allowed to establish and plead that as a matter of fact it had not approved the admission of the students in question, the subsequent stage whether the University can be compelled to approve the admission contrary to the terms of the Ordinance I will arise. In Dhana Pathak and

others v. Sona Koeri(5) certain raiyats representing themselves to be tenure-holders had inducted the defendant in that case, on the land and had made a raiyati settlement with him. Subsequently, the raiyats filed a suit for ejectment of the defendant on the allegation that the defendant was an under-raiyat of the plaintiffs who were raiyats and that the defendant did not vacate the land after the service of the notice to quit. The defendant pleaded that he plaintiffs by reason of their representation that they were tenure-holders were estopped from denying that the defendant was a raiyat. In the records of rights, the plaintiffs were undoubtedly recorded as raiyats and under the Chtoa-Nagpur Tenancy Act. a raiyat cannot grant any permanent rights and on this basis the plaintiffs contended that no question of estoppel could arise since any creation of permanent rights by them was contrary to statute and there cannot be an estoppel against the statute. The Court pointed out in that case:

"THE first issue, Therefore, is as to whether the plaintiffs are or are not tenure-holders and it is at this stage that the dectrine of estoppel operates. The plaintiffs having represented themselves as tenure-holders cannot be "permitted to enter into a discussion of this question of fact but must be held bound by their own representation. No question, Therefore, of the operation of the statute can arise. The plaintiffs are prevented from proving the fact which is indispensable before the matter of the statute can be considered."

(18) In these cases also, on the basis that by its inaction and silence for a long time, the University must be held to have confirmed or approved the admission of the students in question and the University is estopped from contending that in fact it did not approve the admission of the students in question and only if the University is permitted to plead the same, the question whether the University could grant such approval in view of the Ordinance will arise. To a similar effect is the decision of the Lahore High Court in S. Nand Singh v. Rahmat Din (minor) and others (5). In that case, there was a mortgage and if the mortgagor belonged to a particular agricultural tribe called Bhatti Rajput the mortgage would contravene the provisions of the Punjab Alienation of Land Act and if, on the other hand, he had belonged to a different tribe called Bhatti Behl, then the mortgage would not have contravened the said provisions. The mortgagor had described himself as of the Behl Bhatti tribe when he created the mortgage. In a litigation, the question whether the mortgagor was a member of an agricultural tribe and whether the mortgage contravened Punjab Alienation of land Act was raised but the same was compromised by the mortgagor abandoning the plea and agreeing to a decree being passed on the assumption that the mortgage in suit was a perfectly valid mortgage having been effected by a person who was not a member of an agricultural tribe and Therefore, did not contravene any provisions of the Punjab Alienation of Land Act. It is this compromise which was said to operate as estoppel and the answer to that was that the mortgagor did really belong to an agricultural tribe and, Therefore, the mortgage contravened the provisions of the Punjab Alienation of Land Act. With

reference to this, the Court observed:

"IT is quite true that there can be no estoppel against a statute but I do not see that this well-recognised rule implies that there can be no estoppel even against a plea of a fact which has to be established before the application of the statute can be invoked. A man may not estop himself "by any conduct of his from pleading that an alienation made by him is in contravention of a provision of the Punjab Alienation of Land Act. He may, however, estop himself by such conduct from pleading that he is a member of a tribe to which prtoection is afforded by the Act."

(19) Consequently, in these cases, the estoppel operates only to the extent of preventing the University from pleading that, as a matter of fact, it did not approve of the admission of the students concerned, and Therefore, at that stage the application of the statute did not arise and hence, the doctrine that there can be no estoppel against a statute can have no operation.

(20) The leading case in regard to the distinction between ultra virus and irregular acts with reference to the terms of a statute is that of the Privy Council in Maritime Electric Company Ltd. v General Dairies, (6) 1937 referred to and relied on by the learned Judge. In that case, the appellant was a private company selling electric power and was a ""'public utility" company within the meaning of the Public Utilities Act of New Brunswick. It was under a. statutory duty to furnish reasonably adequate service and as a public utility company by Section 16 of the Act it was prevented from charging, demanding, collecting or receiving a greater or less compensation for any service than was prescribed in such schedules as were at the time established, or from demanding, collecting or receiving any rates, tools or charges not specified in such schedules. By Section 18, it was provided that any public utility company charging or receiving for any service rendered a greater or less compensation than that prescribed as provided by the Act was guilty of ""'unjust discrimination", which was thereby prohibited and was made liable to a penalty. By Section 19. no person, firm or corporation

"SHALL knowingly solicit, accept or receive any rebate, concession, or discrimination in respect to any service in, or affecting or relating to, any public utility whereby any such service is by any device whatsoever, or otherwise, rendered free or at a less rate than that named in the schedules in force, as provided herein, or whereby any service or advantage is received other than is herein specified."

(21) A penalty was provided for the violation of that Section. The appellant-company sold electric current to the Diary-tompany. Owing to a mistake on the part of the appellant-company''s employees the amount of current supplied to the respondent-company was wrongly determined and as a result of it, the respondent-company paid for only l/10th of the current actually supplied. Relying upon the correctness of the accounts as rendered by the appellant-company, the respondent-company had paid large sums of money to certain vendors of cream. When the

appellant-company sought to recover the difference due to it from the respondent-company, according to the schedule in force during that period, the respondent raised the plea of estoppel while the appellant put forward the contention that under the statute. the appellant could not collect anything less and Therefore there could be no estoppel against the statute. Dealing with this plea of estoppel, the Privy Council observed as follows:

"THE sections of the Public Utilities Act which are here in question are sections enacted for the benefit of a section of the public, that is, on grounds of public policy, in a general sense. In such a case-and their Lord-ships do not propose to express any opinion as to statutes which are not within this category-where, as "here, the statute imposes a duty of a positive kind, not avoidable by the performance of any formality for the doing of the very act which the plaintiff seeks to do, it is not open to the defendant to set up an estoppel to prevent it. This conclusion must follow from the circumstance that an estoppel is only a rule of evidence which, in certain special circumstances, can be invoked by a party to an action; it cannot, Therefore, avail, in such a case, to release the plaintiff from an obligation to obey such a statute, nor can it enable the defendant to escape from a statutory obligation of such a kind on his part. It is immaterial whether the obligation is onerous or otherwise to the party suing. The duty of each party is to obey the law. To hold, as the Supreme Court has done, that in such a case, estoppel is not precluded, since, if it is admitted, the statute is not evaded, appears to their Lordships, with respect, to approach the problem from the wrong direction; the court should first of all determine the nature of the obligation imposed by the "statute, and then consider whether the admission of an estoppel would nullify the statutory provision. A similar conclusion will be reached if the question put by the learned Judge is looked at from a somewhat different angle. It cannot be doubted that, if the appellant company, with every possible formality, had purported to release its right to sue for the sums remaining due according to the schedules, such a release would be null and void. A contract to do a thing which cannot be done without aviolation of the law is clearly void. It may be asked, with force, why, if a voluntary release will not put an end to the obligation of the respondent- company, an in advertent mistake by the appellant- company, acted upon by the respondent-company, can have the result of absolving the appellant-company from its duty of collecting and receiving payment in accord- dance with the law. To collect the money due will in one sense, cause loss or injury to the respondent-company, to the extent of S 1,931.82. Their Lordships do not know, because the admission (No. 9 above) "does not cover the point whether to allow the estoppel will not leave the respondent-company with an advantage, consisting of the difference between the sum of S 1,931.82 and the ttoal amount by which the respondent-company was led to increase its payments of cream to farmers and others. It is, however, clear that to disallow the estoppel will leave the respondent-company out of pocket, to the extent of the increased amounts just referred to. It is an unfortunate result; but the obligation to obey a positive law is

more compelling than a duty not to cause injury to another by inadvertence. In the present case, it may be observed that the injury is not a cause of action. Their Lordships are unable to see how the court can admit an estoppel which would have the effect pro tanto and in the particular case, of repealing the statute."

(22) This decision, makes a clear distinction between a statute providing for something being done in accordance therewith and prohibiting the same being done in any other manner and a statute itself providing for relaxation, of its own. requirements in certain situation and under certain circumstances. If the principle of this decision is applied to the facts of these cases, the presence of Ordinance X-A will indicate that an admission made in contravention of clause 1 of Ordinance I is not ttoally void or ultra virus the powers of the authorities making the admission. The position is that if the terms of a statute are absolute and do not admit of any relaxation or exemption, then anything done contrary to the terms of such a statute will be ultra virus and will be void and no person can be estopped from putting forward the contention that what he did was illegal or void. On the other hand, if a statute having prescribed certain conditions or qualifications for the doing of a certain thing, itself provides for exemption there from under certain circumstances or authorises somebody to exercise the power of exemption, then anything done not in terms of those conditions or qualifications will not be ultra virus and will be said to be merely irregular and to such an act, the proposition that there can be no estoppel against a statute will have no application. The following observations of the Supreme Court in Thakur Amar Singhji v. State of Rajasthan (7) are not without significance in this context:-

"AND even if such assurance had been given, it would certainly not have been "binding on the Government because because its powers of resumptiona re regulated by the statute, and must be exercised in accordance with its provisions. The Act, confers no authority on the Government to grant exemption from resumption and an undertaking not to resume will be inviid, and there can be no estoppel against a statute."

(23) The decisions cited by Shri Avadh Behari do not dislodge or negative this position. The case of the Ministry of Agriculture and Fisheries v. Matihews (8) clearly dealt with an ultra virus act. So also the case of Rhyl Urban District Council v. Rhyl Amusements Ltd., reported in 1959(1) All E R 257. dealt with an ultra virus act and over and above that, in that case, an argument was put forward that the corporate body there had the power to do the thing if it had obtained the necessary consent from a third party and, Therefore, it was not a case of the corporate body not having any power at all. With reference to that argument it was printed out:-

"IF this be nto, as I suspect, a quibble, a like answer could be made that it would destroy the necessity of ever obtaining consent, if a statutory body omitting "to obtain it could thereafter be held estopped. Such a body could by these means confer on itself a power which it had not got, and the ultra virus doctrine would be

reduced to a nullity."

(24) So also the decision of the Calcutta High Court in Satibhusan Mukherjec v. The Corporation of Calcutta (9) dealing with an ultra virus act of a corporate body can have no relevance. The other two decisions relied on by Shri Avadh Behari in the Mayor, Aldermen & Burgesses of the Borough of sunderland v. Pristman(10) and the case of Southend-on-sea Corporation v. Hogdson (Wick ford) Ltd., (11) in dealing with the question whether estoppel could be raised hindering the exercise of a statutory discretion conferred upon a public authority can have no bearing on the present question. Similarly the statements "estoppel of all kinds, however are subject to one general rule; they cannot override the law of the land..... .Nor is a Corporation estopped by its acts which are ultra vires....." contained in paragraph 2032, page 846 of Phipson on Evidence (10th Ed.) cannot apply to the facts and circumstances of these cases in view of the position already explained. Therefore, we are of the view that the doctrine that there can be no estoppel against a statute has no application to the circumstances of these cases.

(25) On the next point of Shri Avadh Behari that silence alone cannot constitute an estoppel can be considered along with the question whether the principles contained in Section 115 of the Evidence Act are applicable to the facts of these cases at all. Section 115 of the Evidence Act is in the following terms :-

"WHEN one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be a true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceedings between himself and such person or his representative, to deny the truth of that thing."

According to this Section, for the application of the principle of estoppel, the following ingredients must be present:-

(A) There must be a declaration, act or omission on the part of one person.

(B) By the said declaration, act or omission, that person must have intentionally caused or permitted another person to believe a thing to be true, and

(C) he must have intentionally caused or permitted the said another person to act upon such belief.

Unless all these three requirements are cumulatively present: in a particular case, the principle of estoppel cannot come into operation. It is significant that it is not merely a positive or active declaration that can be the basis for a plea of estoppel, but also an act or omission can constitute such basis. An estoppel may arise from silence as well as words. However, to constitute an "estoppel by silence" or "acquiescence" it must appear that the party to be estopped must be bound in equity and good conscience to speak and that party claiming estoppel relied upon such silence or acquiescence and was misled thereby to change his position to his

prejudice. As far as the present cases are concerned, there can be no doubt whatever that the University owed a duty to the students concerned either to approve or to reject the provisional admission made by the Principals of the Colleges within a reasonable time. Though the University has the power of approval or rejection, from the very nature of that power, it must be held that it is a power coupled with as duty. When the applications were taken from the students by the Principals of the College for forwarding the same to the University, the Principals were acting as agents of the Universtity and the University all along knew that on the strength of the provisional admission granted to them by the Principals, the students are continuing their studies in the college and if they are to be told that they were not eligible for admission. they should be told so at an early time. What can be the reasonable time within which the University can reject the provisional admission of the students should be determined after taking in to account the fact that they were young students studying in the colleges and for them every year matters in their life and career and the course itself for which they sought admission was of three years'' duration. As pointed out already, Shri Ashok Kumar Chopra was informed of the rejection in November 1966, Shri Chittaranjan Das Sharma was informed in September 1966 and Shri Yashoda Nandan Sharma was informed in June 1966. The common feature is that this rejection was communicated to the students after the three students have completed one year in the college. Shri Avadh Behari brought to our notice clause 2-A of Ordinance X which was introduced on 10/11/1965, and which is as follows:-

"Nto With Standing anything contained, expressly or impliedly, in these rules, permission to any candidate to appear at a University examination shall be deemed withdrawn retrospectively, if at any time, before the publication of results, the Vice-Chancellor is satisfied that:-

(I) an admission irregularity had occurred resulting in the candidate being ineligible for admission to the course and/or

(II) a discrepancy had crept in the attendance record resulting in the candidate being ineligible for admission to the examination."

(26) Relying upon the above clause, Shri Avadh Behari contended that the University has got power to cancel the admission of the students at any time before the publication of the results. For one thing, this provision was incorporated after the students have obtained the provisional admission in the respective colleges and, Therefore, we are doubtful whether the same can be pressed into service against the first respondents herein. Secondly, this is an enabling provision and that enabling provision cannot be taken advantage of to defeat the claim of the students in these cases. It is not the case of Shri Avadh Behari that a student who has been admitted into three year B.A. (Pass Course) degree should be uncertain about the fact of his proper admission till he completes all the three years and appears for the University- examination and till the examination results are announced, and the

possibility of the rejection of his admission into the B.A. Course will be hanging like a Democles Sword over his head all through. Therefore, we are unable to accept the contention of the learned counsel for the University that because of this provision in the Ordinance, we must hold that the University should not be estopped from contending that it had not approved of the admission of the students concerned at any time anterior to the dates on which the University communicated the rejection, of the admission. Shri Avadh Behari, in this context, relied upon. the judgment of the Privy Council in Greenwood (Pauper) v. Martins Bank Ltd.,(12) and invited our attention to the following sentence therein:-

"MERE silence cannot amount to a representation, but when there is a duty to "disclose, deliberate silence may become significant and amount to a representation."

(27) As supporting his contention. We are unable to find any support for his case in the above sentence since we have already held that the University owed a duty towards the students to make known to them within reasonable time whether the University had approved of their admission or nto. In the absence of a compelling command or context, we are not disposed to accept the contention of the learned counsel for the appellant that the University has got the power to reject a provisional admission till the publication of the results of the University examination and, therefore. at no time anterior to the said publication of the results the students can proceed on the belief that the University has approved of their admissions. To accept such a contention will be to encourage and to put a premiuin on callous indifference on the part of the University officials and to allow them to play havoc with the life and career of thousands of young men and women seeking admission into the portals of University. Shri Avadh Behari did not deny and could not have denied that there had been inordinate delay on the part of the University in scrutinising the various applications and coining to a decision whether to confirm or to reject the provi sional admissions already made by the Principals of the Colleges but, sought to explain it away by pleading that such delay was inevitable since about 16,000 students sought admission and the staff employed by the University was a very small one. This can. hardly be an acceptable Explanation when the consequences to the students in case of delayed rejection are so serious and disastrous. When the University has undertaken the task, it must keep itself equal to it and such an Explanation of inconvenience and, economy cannot, from the very nature of the case, be an answer, much less an effective answer, for failure to discharge the first and the most elementary duty it owed to the students.

(28) Allied to this above contention is the contention of the learned counsel that the test of intetsionally causing or permitting another person to believe a thing to be true has not been satisfied in these cases. The learned counsel''s argument is that unless it can be said that the University deliberately misled the students by its inaction or silence into believing that their admissions had been approved, the plea

of estoppel cannot be invoked. The same argument was put forward before Tatachari, J. and the learned Judge had rejected that contention, relying upon the following observation of the Privy Council in Sarat Chunder Devand others v. Gopal Chunder Laha and others (13)

"Aperson who by his declaration, act or omission, had caused another to believe a thing to be true and to act upon that belief, must be held to have done so ''intentionally'' within the meaning of the statute, if a reasonable man would take the representation to be true and believe it was meant that he should act upon it."

The position is stated thus in Halsbury''s Laws of England, 3rd Ed. Vol. 15, page 228:

"IT is not necessary that the representation should be false to the knowledge of the party making it, though in the early cases this appears to have been the law, provided that:

(1) it is intended to be acted upon in the manner in which it was acted upon, or

(2)the person who makes it so conducts himself that a reasonable man would take the representation to be true, and believe that it was meant that he should act upon it in that manner....."

(29) We entirely agree with this conclusion of the learned Judge and reject the contention of Shri Avadh Behari. It cannot be disputed that the students acted to their detriment when they continued their studies in the colleges in the belief that their admissions had been approved by the University. Their continuance in college after paying the requisite fees constituted their acting to the detriment on the strength of the belief that their admissions had been approved by the University. Therefore, in our opinion, all the requirements of Setction 115 of the Evidence Act are satisfied in these cases and consequently, the plea of estoppel will be available against the University. Though there is some difference in facts, the principle of the decision of the the Madras High Court in Registrar, University of Madras v. Sundura Shetti and others (14) supports this conclusion.

(30) Shri Avadh Behari then cited several authorities where it had been held that the plea of estoppel would not apply where the probabilities are that buth the parties were under a mistaken impression as to their respective rights and it is sufficient for us to say that with reference to the facts of these cases, those decisions have no relevancy.

(31) Shri Avadh Behari as well as Shri Rameshwar Dial the learned counsel for the students, brought to our notice some other decisions and text-books dealing with the doctine of ultra virus in relation to companies and corporations. It is not necessary to refer to them in detail in view of the position explained by us already in this behalf.

(32) Shri Avadh Behari also contended that the Academic Council by a resolution dated 14/1/1967 declined to give exemption to Shri Ashok Kumar Chopra and, Therefore, the doctine of estoppel cannot be applied with reference to his case. In our opinion, this contention proceeds on a misapprehension. A reference to the existence of Ordinance X-A was made only for the purpose of showing that an admission made in contravention of the requirements of Ordinance I, cannot be said to be ultra virus but only irregular and, Therefore, whether the Academic Council as a matter of fact, exercised the power of exemption in favor of any one of the students or not is wholly irrelevant for the purpose of considering this qustion with reference to the plea that there can be no estoppel against a statutue.

(33) No other points were urged before us by the learned counsel for the appellant.

(34) For these reasons, we agree with the conclusion of Tatachari, J. and dismiss these letters Patent Appeals.

(35) We wish to make it clear that this decision of ours has no application to a case where a student is guilty of fraud, deception or concealment of material particulars while seeking and obtaining admission.

(36) The first respondents in each of these appeals will have to costs of their appeals from the appellant and, we fix the counsel''s fee at Rs. 250.00 in each of the appeals.