



***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION (L) NO.392 OF 2023

Rohan Ravindra Thatte)
Age 34 years, occ. Student)
R/at.303, Pratham C.H.S.,)
Prarthana Samaj Road,)
Vile Parle East)
Mumbai – 400 057.) .. Petitioner

Versus

1. University of Mumbai)
through its Vice Chancellor,)
Main Building, Fort, Mumbai-01.)
2. State Common Entrance Test Cell)
through its Director)
Having office at 8th Floor,)
New Excelsior, Building,)
A. K. Nayak Marg, Fort,)
Mumbai-01)
3. Chembur Karnataka Sangh's)
Chembur Karnataka College of Law)
through its Principal,)
Having office at Vidyasagar,)
4th Floor, Ghatla, Chembur,)
Mumbai – 400 071.)
4. Parle Tilak Vidyalaya Association's)
Sathaye College,)
through its Principal,)
Having Address at Dixit Road,)
Vile Parle, Mumbai – 400 057.)
5. State of Maharashtra)
through its Secretary,)
Department of Education,)
Mantralaya,)
Mumbai – 400 032.) .. Respondents

Mr.Vikram Walawalkar a/w Mr.Arjun Kadam for the petitioner.
Mr.Gaurav Sharma a/w Mr.Siddharth Shitole i/by Mr.Ashutosh Kulkarni
for respondent no.1- University of Mumbai.
Mr.Neel G. Helekar a/w Mr.Kanhaiya S. Yadav for respondent no.4.
Mr. Himanshu Takke, AGP for respondent no.5.

**CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.**
DATE : 15th January 2024

Judgment (Per Jitendra Jain, J.) :-

1. Rule. Mr.Sharma, learned counsel waives service for respondent no.1-University, Mr.Helekar, learned counsel waives service for respondent no.4 and Mr.Takke, learned AGP waives service for respondent no.5. By consent of parties, the petition is heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioner has sought appropriate writ against respondent no.1 whereby the petitioner vide communication dated 17th December 2022 has been declared as ineligible for 3 year LL.B. course.

3. Briefly, the facts are as under :-

(i) In July 2021, the petitioner made an application to appear for State Common Entrance Test (CET) conducted by the Government of

Maharashtra – Respondent no.5 for the course of 3 year LL.B. In the said application, the petitioner stated that he has passed B.A. exam with 45.15% in the year April 2020. Pursuant thereto, CET exam was conducted by respondent no.5 for the academic year 2021-22 and the petitioner was declared as a successful candidate in the “open category” on 29th October 2021. The petitioner under CAP was allotted seat in respondent no.4 college. The petitioner furnished all the documents including mark-sheets of all 3 years of his B.A. course to respondent nos. 3 & 4, who in turn, after scrutinizing the same forwarded the documents to respondent no.1 on 9th May 2022. It was on this basis and after verifying the documents that the petitioner’s admission was confirmed by respondent nos.1 and 3 for the academic year 2021-22.

(ii) Meanwhile the petitioner vide interim orders of this Court dated 6th March 2023 and 24th November 2023 was permitted to appear for semester III, IV and V exam. We are informed by the petitioner that he has cleared these semesters and is now in the final VIth semester.

(iii) However on 17th December 2022, respondent no.1 informed the petitioner that at the outset, he is found to be ineligible for taking admission to LL.B. course on account of less percentage as per Ordinance 0.05078. It is this communication which is under challenge in the present petition since as per this communication, the petitioner is now

sought to be debarred from pursuing the LL.B. course.

4. The petitioner contended that respondent no.1 is not justified in treating him as ineligible after completion of IInd semester and after having cleared CET and allotted the seat. The petitioner submits that he had filed all the documents with the respondents and, therefore, no fault can be found at his end. The petitioner further contended that Ordinance 0.5078 is not applicable in his case since CET examination was not conducted by respondent no.1 and furthermore Ordinance 0.5078 does not make him ineligible on the ground of less percentage in B.A. course. The petitioner submits that in the first year B.A. mark-sheet, marks obtained was stated by respondent no.4 as 267+030, which he bonafidely read as aggregating 297 and not 267.03. The plus grace 030 was on account of he being NCC student. The petitioner states that on identical facts situation, this Court in ***Vinayak Uttam Hirave Vs. Ideal College of Law & Ors.***¹ has permitted the student to complete his course and the facts being identical, the present petition is also required to be allowed.

5. Respondent no.1 contended that the petitioner has obtained 43.8% of marks in B.A. course and not 45% which is minimum

1 Writ Petition No.3957 of 2022 decided on 3rd January 2024

percentage required to become eligible for LL.B. course and since there is shortfall of 1.2%, the petitioner is not eligible to continue the course. However, respondent no.1 has not disputed that they have informed about ineligibility only after allotment of the seat and that too at the end of IInd semester out of VIth semester. Respondent no.1 has relied upon Ordinance 0.5078 in support of his contention to disqualify the petitioner.

6. Respondent no.3 has filed an affidavit-in-reply and supported the case of the petitioner.

7. We have heard the learned counsel for the petitioner and the respondents and with their assistance perused the documents annexed to the petition and the reply.

8. In our view, the issue which arises in the present petition is clearly covered by the decision of this Court in ***Vinayak Uttam Hirave Vs. Ideal College of Law & Ors. (supra)*** wherein on a very similar facts situation, this Court has permitted the student to complete his LL.B. course by quashing the communication invoking Ordinance 0.5078. It is apt to reproduce the relevant paragraphs of the said decision.

“8. *There is no dispute that the petitioner has completed 5 semesters out*

of 6 semesters of LL.B. course. The petitioner has cleared the first 4 semesters with good marks and result of 5th semester is withheld by the respondents. The admission was granted in the year mid 2019 for the academic session 2019-20, however, no such objection as to his eligibility was taken till he appeared for his 5th semester exam and was about to take admission in the 6th semester. There is no explanation by respondent no.2 as to why at the fag end of the course, after more than 2 years, they have taken an objection to the eligibility of the petitioner. The admission process was completed by respondents in mid 2019 and therefore, reason given by respondent no.2-university for delay by taking shield of pandemic is misconceived because pandemic started in March 2020. Respondent no.2 ought to have objected at the threshold itself and ought not to have allotted the seat. However, after allotting the seat and the petitioner having completed 5 out of 6 semesters, at the fag end of the course cannot take this objection. In the admission form filed by the petitioner with respondent no.1 college, in the academic category details, he has stated that he has obtained 48.17% marks which were the marks obtained in final year of B.Com. examination. The admission form did not specify that the average of 3 years of B.Com. should be stated. Therefore, one cannot attribute any mis-declaration to the petitioner moreso, when the mark-sheets of all the 3 years of B.Com. course were furnished to the respondents which clearly evidenced the marks obtained by him in all three years. There is no mis-declaration or concealment by the petitioner on this count. The Circular dated 10th June 2019 by respondent no.2 stating process to be followed by colleges for determining eligibility states that it is only after verification of mark-sheets by both the respondents that the admission will be confirmed. Therefore, once having confirmed the admission by the respondents, they cannot attribute any mis-declaration to the petitioner.

9. The Ordinance O.5078 states that the University may conduct Common Eligibility Examination for candidates who have secured more than 40% but less than 45% marks at the respective qualifying examinations and the candidates passing such eligibility exam would become eligible for admission to law courses. There is no dispute that the average marks of 3 years of B.Com. obtained by the petitioner is 40.63% and there is also no dispute that the petitioner has cleared common eligibility exam. The Ordinance O.5077 supports the petitioner and is in consonance with O.5078 when it states that if there is an eligibility test then qualifying marks should be 40% in case of 3 year LL.B. course. The contention of respondent no.2 that broucher states average marks of B.Com. Exam is not the basis of communication whereby the petitioner's eligibility is questioned and therefore, same cannot be raised before this Court and in any case that would be relevant if eligibility was questioned before allotment and granting admission and not at the fag end of the completion of the course. Therefore, invocation of Ordinance O.5078 by respondent no.2 to declare the petitioner ineligible is not correct.

10. In our view, the petitioner is justified in placing reliance on the decision of this Court in case of **Aarti Harish Bhandari Vs. Shree L.R. Tiwari College of Law (supra)** wherein on a very similar situation, this Court

*directed the University to declare the petitioner therein as eligible to appear in the 5th and 6th semester examinations and permitted the petitioner to complete the course. The petitioner is also justified in placing reliance on the decision of this Court in case of **Azim Pashalal Kani Vs. Bar Council of India & Ors. (supra)**. Thus the impugned decision taken by the respondents deserves to be quashed and set aside.”*

9. It is also important to note that Ordinance 0.5078 speaks of exam being conducted by respondent no.1-University whereas in the instant case, it is the State-respondent no.5 who has conducted CET and therefore even in this count, the said Ordinance is not applicable.

10. In view of the above, we pass the following order :-

- (i) The communication dated 17th December 2022 is quashed and set aside and the respondents are directed to permit the petitioner to complete his LL.B. course.
- (ii) The respondents are directed to declare the results of the petitioner of the semesters in which the petitioner has appeared but have been withheld, if the same have not yet been declared.

11. The petition is allowed in the aforesaid terms. Rule is made absolute. No order as to costs. Parties to act on the authenticated copy of this order.

12. At this stage, we may observe that this Court has come

across similar such matters time and again. We therefore, observe that the University should inform the students about their ineligibility before allotting the seat in any college or at least before completion of Ist semester. It would not be fair to inform the student about his/her ineligibility at the fag end of the course since by then the student would have invested much time, money and energy in completion of the course. This would go a long way in resolving such an issue that comes before the Court time and again.

JITENDRA JAIN, J.

A. S. CHANDURKAR, J.

