

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.12.2014

Delivered on: 23-1-2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

Writ Petition No.3513 of 2014 and M.P.No.1 of 2014

G.Bappudurai

... Petitioner

Vs.

1. The Registrar,
The Tamil Nadu Dr.Ambedkar Law University,
"Poompozhi", 5, Dr.D.G.S.Dhinakaran Salai,
Chennai - 600 028.

2. The Bar Council of Tamil Nadu and
Pondicherry rep. by its Secretary.
Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari Mandamus to call for the records on the file of the first respondent bearing reference No.2462/Regr/Acad/ A2/2013 dated 29.10.2013 and quash the same and direct the 2nd respondent to register the petitioner on its rolls.

For Petitioner	...	Mr.V.Lakshminarayanan
For Respondent-1	...	Mr.V.M.G.Ramakannan
For Respondent-2	...	Mr.S.Y.Masood.

O R D E R

The petitioner has come up with the above writ petition, challenging a show-cause notice issued by the Tamil Nadu Dr.Ambedkar Law University, calling upon him to show cause as to whether or not he fulfilled the eligibility criteria for admission to a three year B.L. Degree Course in the Government Law College, Tirunelveli.

2. I have heard Mr.V.Lakshminarayanan, learned counsel for the petitioner, Mr.V.M.G.Ramakannan, learned counsel for the first respondent and Mr.S.Y.Masood, learned counsel for the second respondent.

3. The petitioner passed the X Standard in April 1997. He joined the Higher Secondary Course and completed the Course in March 1999. But he failed in one subject.

4. Without clearing the arrear paper and thereby completing the

Higher Secondary Course, the petitioner joined the Bachelor's Degree Course in Arts, in the Alagappa University, under the Distance Education Program. In January 2010, the petitioner obtained a degree from the Alagappa University in Bachelor of Arts in History.

5. Thereafter, the petitioner appeared for the arrear paper in the Higher Secondary Examination in March 2010 and cleared it.

6. During the academic year 2010-11, the petitioner applied for admission to a three year Degree Course in Law and he was allotted to the Government Law College, Tirunelveli, by the first respondent University, in the counselling held on 14.09.2010. He was also issued with a certificate of eligibility to join the three year B.L. Degree Course for the academic year 2010-11.

7. During the period 2010-13, the petitioner completed the three year Law Degree successfully, from the Government Law College, Tirunelveli. He was issued with a Provisional Certificate on 19.09.2013 by the University. It appears that the petitioner also paid the necessary fees towards the Advocates Welfare Fund, Group Insurance Scheme, Resumption Charges and Enrollment Certificate fee.

8. However, it appears that a good samaritan sent a letter to the University informing them that the petitioner was admitted to the three year Law Degree, without having completed the eligibility criteria of 10 years of schooling, followed by 2 years of Higher Secondary Course and 3 years of Bachelor's Degree Course. Immediately, the University issued a show cause notice calling upon the petitioner to show cause as to whether he fulfilled the eligibility criteria for joining three year B.L. Degree Course. Though the petitioner sent a reply on 16.12.2013, he has also come up with the above writ petition challenging the show cause notice.

9. The contention of Mr.V.Lakshminarayanan, learned counsel for the petitioner is basically two fold namely:-

(a) that the petitioner had in fact fulfilled the eligibility criteria in the year 2010-11 for joining the three year B.L. Degree Course; and

(b) that the University is estopped from questioning his eligibility, after having issued the eligibility certificate way back on 21.09.2010 and after having allotted him to the Tirunelveli Government Law College. सत्यमेव जयते

10. I shall first take up the second contention, since it is capable of being disposed of easily. This contention relates to estoppel.

11. It is true that the University issued a recognition-cum-eligibility certificate on 21.09.2010, to the effect that the petitioner was eligible for admission to the first year of the B.L. Degree Course. But, there is nothing on record to show that the University was aware of and conscious of the fact that the petitioner completed the Higher Secondary Course only after securing a degree from the Alagappa University. As I have pointed out earlier, the petitioner completed SSLC in April 1997 and joined the Higher Secondary Course in June, 1997. Though he completed the Higher Secondary Course in March 1999, he failed in Mathematics. But, he

took advantage of the stream of Distance Education offered by the Alagappa University and joined the degree course even without passing Higher Secondary Course. In the examination conducted in May 2009, the petitioner passed the B.A. degree course. A Provisional Certificate was issued in January 2010. It was only thereafter that the petitioner wrote the arrear paper in Higher Secondary Course in March 2010 and passed the same.

12. Therefore, unless it is established that the University was conscious of and aware of the sequence in which the petitioner had undergone the Higher Secondary Course and the Degree Course, no estoppel can be pleaded against the University. In any case, if a person does not fulfil the eligibility criteria as per the statutes, the mere fact that the University issued a letter of recognition, will not operate as estoppel. The eligibility certificate dated 21.09.2010 issued by the University was only provisional in nature. Therefore, the fact that the University had issued a recognition certificate in 2010, would not prevent them from re-examining the eligibility criteria. Hence the second contention of the petitioner is rejected.

13. Coming to the first contention, the case of the petitioner is that as per the Bar Council of India Regulations, as approved by the Syndicate of the University, the eligibility criteria fixed for admission of candidates to a three year degree program in Law, for the academic year 2010-11 were as follows:-

"i. A pass in the Bachelor's Degree Course of any University recognized by the Tamil Nadu Dr. Ambedkar Law University with not less than 45% of marks in aggregate.

ii. Candidates belonging to SC/ST communities should have secured 40% of marks in aggregate in the qualifying Degree Course.

iii. The applicants who have obtained 10+2 or Graduation/Post Graduation through Open University system directly without having any basic qualification are not eligible for admission in the law courses".

14. Chapter II of the Rules of Legal Education framed by the Bar Council of India contains the eligibility condition in Rule 5. Rule 5 reads as follows:-

"5 (a) Three Year Law Degree Course: An applicant, who has graduated in any discipline of knowledge from a University established by an Act of Parliament or by a State Legislature or an equivalent national Institution recognized as a Deemed to be University or foreign University recognized as equivalent to the status of an Indian University by an authority competent to declare equivalence, may apply for a three years degree program in law leading to conferment of L.L.B degree on successful completion of the regular program conducted by a University whose

degree in law is recognized by the Bar Council of India for the purpose of enrolment.

(b) Integrated Degree Program: An applicant who has successfully completed Senior Secondary School course (+2) or equivalent (such as 11+1, 'A' level in Senior School Leaving Certificate Course) from a recognized University of India or outside or from a Senior Secondary Board or equivalent, constituted or recognized by the Union or by a State Government or from any equivalent institution from a foreign country recognized by the government of that country for the purpose of issue of qualifying certificate on successful completion of the course, may apply for and be admitted into the program of the centres of Legal Education to obtain the integrated degree in law with a degree in any other subject as the first degree from the University whose such a degree in law is recognized by the Bar Council of India for the purpose of enrolment.

Provided that applicants who have obtained +2 Higher Secondary pass Certificate or First Degree Certificate after prosecuting studies in distance or correspondence method shall also be considered as eligible for admission in the Integrated Five Year Course or three years L.L.B course, as the case may be.

Explanation: The applicants who have obtained +2 or graduation/post graduation through Open University system directly without having any basic qualifications for prosecuting such studies are not eligible for admission in the law course".

15. In the case on hand, the petitioner had pursued 10 years of schooling, two years of Higher Secondary Course and a three year degree program. But unfortunately, he had not done this in the sequence in which, a person is obliged to complete them. Under the guise of opening up opportunities for people to educate themselves, many Universities have created schools of Distance Education and Open University Stream. The actual object of creating schools of Distance Education and Open Universities was to enable the working class, to quench their thirst for knowledge and education and to enable them to hone their skills. Experts in the field of education, starting from those in the University of Wisconsin (where Distance Education was first effectively conceived) who invented an idea of Distance Education and Open Universities, could have never imagined that these streams of education will be used to pervert the entire system of education. Today, some of the schools of distance education, have virtually become places distanced from education.

16. Fortunately, the Supreme Court put an end to the perversion created by various Government Orders, in its decision in Annamalai University vs. Secretary to Government, Information and Tourism

Department [2009 (4) SCC 590]. Thereafter, the Government issued orders to the effect that unless a person had completed 10 years of schooling and two years of Higher Secondary Course before acquiring a degree, the qualification of a degree obtained through Open Universities will not be recognized. This Government Order has also been upheld by a Division Bench of this Court.

17. Coming to the facts of the present case, it is seen that the petitioner has in fact acquired a Secondary School Leaving Certificate, a Higher Secondary Course Certificate and a Degree in Arts. However, they were not obtained in the normal sequence. The petitioner obtained a degree before completing the Higher Secondary Course. Therefore, the only question is as to whether the petitioner can be construed to have not acquired the essential qualifications for admission to the three year B.L. Degree or not.

18. Mr.V.Lakshminarayanan, learned counsel for the petitioner relied upon the following decisions:-

(i) M.Bhaskar vs. The Registrar, University of Madras, [1998-2-L.W. 626];

(ii) K.Sakthi Rani v. The Secretary of the The Bar Council of Tamil Nadu [2010-2- L.W. 746];

(iii) J.Joseph Irudayaraj v. Joint Director of School Education [W.A.No.1064 of 2012 dated 06.11.2013]; and

(iv) P.Raman v. The Government of Tamil Nadu [MANU/TN/0495/2014].

19. In M.Bhaskar, a learned Judge of this Court was concerned with the case of a person, who had studied 11 years of schooling, three years of degree course in Science and a three year degree in Law from the Nagpur University. He did not have either 10 years of schooling followed by two years of Higher Secondary Course or 11 years of schooling followed by one year of Pre-University Course. Therefore, the candidate's provisional admission to the Masters Degree in Law was withheld. When he came to Court, the University contended that he should have completed either 10+2+3 or 11+1+3 pattern of education. However, K.Govindarajan,J, relied upon Regulation 2(1) of the University Regulations and came to the conclusion that so long as the degree obtained by the candidate is valid, in terms of Regulation 2(3), it is not open to the University to turn around later and deny the benefit of the degree to the candidate.

20. But unfortunately, for the petitioner, much water has flown under the bridge after the aforesaid decision in M.Bhaskar. No decision rendered prior to the decision of the Supreme Court in Annamalai University can be relied upon by any one today. In Annamalai University, the very same argument was raised in a different form to the effect that the degree obtained from Open Universities is a valid degree in terms of the University Grants Commission Act, 1956 and that there cannot be a distinction between the degree obtained after a formal education and degree obtained without any formal education. But, this argument was rejected by the Supreme Court in Annamalai University. Therefore, the decision in M.Bhaskar is of no assistance to the petitioner.

20. In K.Sakthi Rani, a Division Bench of this Court was concerned with different types of cases, some of which were that of those, who had already completed the Law Degree Courses and some of whom had also been enrolled as advocates. After segregating the cases of persons, who were entitled to some benefit on the application of the principles of promissory estoppel, acquiescence and legitimate expectation and equality, the Division Bench virtually directed the Bar Council of India, to follow the decision of the Supreme Court in Annamalai University and the Rules of Legal Education 2008 issued by the Bar Council of India. Two portions of the order of the Division Bench in K.Sakthi Rani may be of relevance. Hence paragraph 92 (ii) and (iii) as well as para 93 of the decision of the Division Bench are extracted as follows:-

"92. On consideration of the above said factual and legal issues, the following conclusions are arrived at:

.....
(ii) Explanation to Rule 5 of the Rules of Legal Education, 2008, is neither contrary to Section 24(1) of the Act nor beyond the rule making power conferred on the Bar Council of India under section 49 of the Advocates Act, 1961;

(iii) The Bar Council of India is well within its rights to insist that a person having a degree from the Open University under the Indira Gandhi National Open University Act, 1985, cannot be allowed to join a law course in a Law University recognized by it and the Bar Council of Tamil Nadu and Bar Council of India can also refuse to enroll such a person who joins the law course and completes the same. The judgment of the Honourable Apex Court in Annamalai University represented by Registrar v. Secretary to Government, Information and Tourism Department and others, is binding on the Bar Council of Tamil Nadu and Bar Council of India insofar as the applicability of the University Grants Commission Act and Regulations, but the said judgment cannot be applied to the petitioners who have already obtained the law degree. The Rules of Legal Education, 2008, cannot be made applicable to the case of the petitioners who had already completed their law course at the time of coming into force of the Rules;

.....
93. The Bar Council of India is directed to issue intimation to all the Law Universities recognised by it, stating that in view of the judgment of the Honourable Apex Court in Annamalai University represented by Registrar v. Secretary to Government, Information and Tourism Department and others and in view of the Rules of Legal Education, 2008, no

candidate from the Open University having a degree contrary to the University Grants Commission Act and Regulations, and contrary to the Rules of Legal Education, 2008, shall be admitted into a law course. The Law Universities concerned which are recognised by the Bar Council of India will have to convey the said communication of the Bar Council of India to all the Law Colleges affiliated to them. The Bar Council of India is also directed to communicate the above said decisions, to all the State Bar Councils in the country if such communications are not sent already. The Bar Council of Tamil Nadu is directed to decide the pending applications and the future applications in the light of the orders passed by this Court."

21. Therefore, the Explanation to Rule 5 of the Rules of Legal Education 2008, cannot be overcome by the petitioner on the specious plea that he had already completed the course.

22. In Joseph Irudayaraj, the Division Bench was concerned with the case of a person, who was appointed in a minority school as a B.T. Assistant in English. The Director of School Education refused to approve the appointment. He challenged the decision of the Director of School Education unsuccessfully before a learned single Judge. The Division Bench reversed the said decision on the ground that though the candidate had obtained a degree only through Open University, he had subsequently passed the Higher Secondary Examination and that therefore, he could be considered eligible. But, the said decision of the Division Bench, was actually motivated by the fact that the candidate was appointed prior to the decision of the Supreme Court in Annamalai University. This is seen from para 11 of the judgment of the Division Bench.

23. But, in the case on hand, the admission of the petitioner to the three year B.L. Degree happened only after the decision of the Supreme Court in Annamalai University. Therefore, the benefit granted by the Division Bench, out of charity, in Joseph Irudayaraj, to a case which related to an appointment prior to Annamalai University case, cannot be invoked in the case on hand.

24. In P.Raman, a learned Judge was concerned with the eligibility of persons to apply for the posts included in the Combined Subordinate Services Examination-I, 2008, for posts included in Group-II Services of the State of Tamil Nadu. But, it appears that the learned Judge was primarily carried away by the fact that some of those candidates had passed entrance examination or undergone some proprietary course before joining the degree course. Therefore, I do not think that the said decision is of any assistance to the petitioner.

25. The reliance placed upon the definition of the expression "degree" to mean a degree obtained from a University recognized by the UGC Act, 1956, has lost its significance today. When the expression "degree" was defined in the statutes, the law makers never imagined the kind of inventions that could happen in the field of

education, entitling people to acquire all qualifications in the reverse or perverse order. At the time when the expression "degree" was defined in the Statute, people would have honestly believed that a student would undertake a journey from the first standard up to the school final in a sequence and thereafter undergo the entire duration of the degree course. No one would have ever imagined even in the wildest of dreams at that time, that people may acquire a Post Graduate Degree first, followed by an Under Graduate Degree and thereafter complete the Higher Secondary Course, eventually to go to a Kindergarten. Even in the matter of wearing costumes, we follow a particular order. The only exception to this is that of the Superman. People who complete educational courses in the reverse order can only be compared to Superman, the comic book hero.

26. None of the decisions relied upon by the learned counsel for the petitioner may be of any assistance to the petitioner for one important reason. The reason is this. Today there are two streams of legal education. One is a three year degree in law and another is a five year Integrated Course in Law. For admission to a five year Integrated Law Degree, a person should have passed the Higher Secondary Course after 10 years of schooling. For admission to three year Law Degree, a person must have a degree, after having gone through a 10+2 or 11+1 stream of education.

27. If the above position is kept in mind, the paradox in the argument of the petitioner would become very clear. According to the petitioner, he became eligible for admission to the three year law degree, in January 2010 when he was issued with a degree certificate by the Alagappa University. But, he became eligible for admission to the 5 year Integrated Law Degree Course, only after he passed the Higher Secondary Examination held in March 2010. In other words, on the date of which the petitioner became eligible for admission to a three year degree course in law, he was not eligible for admission to a five year degree course in law. There can be no answer to this paradox.

28. To say that at the time of admission in September 2010 the paradox got removed, may not really be an answer. Therefore, I am of the view that the petitioner cannot be taken to have fulfilled the requirement of Rule 5 of the Rules of Legal Education, 2008. Consequently, the petitioner is not entitled to use the degree for enrolment as Advocate.

29. However, a question arises as to whether the petitioner can never make use of the law degree for any purpose and whether it is as good as a waste paper or not. Today, it is only the University (and not the Bar Council), which has issued a notice to the petitioner for the purpose of cancelling the law degree obtained by him. Since the petitioner has already undergone the course and passed it and also since the petitioner has also passed the higher secondary course, I do not wish to make that degree a waste paper. If a private employer is prepared to give employment to the petitioner on the basis of the law degree, I do not wish to stand in the way. But, the same will not

entitle the petitioner to get enrolled as an Advocate in the light of the Rules of Legal Education, 2008 issued by the Bar Council.

30. Hence, the writ petition is partly allowed, setting aside the notice of the University, but declaring that with the law degree conferred on him by the University, the petitioner cannot either enrol as Advocate or enter into the Judicial Service. There will be no order as to costs. Consequently, M.P.No.1 of 2014 is closed.

Sd/-

Assistant Registrar

Dated:30.1.15

True Copy

Sub Assistant Registrar

To

1. The Registrar, The Tamil Nadu Dr.Ambedkar Law University,
"Poompozhi", 5, Dr.D.G.S.Dhinakaran Salai, Chennai - 600 028.
2. The Secretary, Bar Council of Tamil Nadu and Pondicherry,
High Court Campus, Madras-104.

+1 cc to Mr.S.Y.Masood, Advocate,SR.3599

+1 cc to Mr.V.Raghavachari, Advocate,SR.3466.

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ORDER IN
W.P.No.3513 of 2014

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