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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9955 OF 2016

Mirza Ashraf Baig s/o
Mirza Anwar Baig,
Age: 41 years,
Occu: Primary Teacher at
Anjuman Urdu Primary School
at Parbhani,
R/o. Flat No.1, infront of
Umar Farque Masjid Iqbal Nagar,
Parbhani, Tq. & Dist. Parbhani

..PETITIONER

VERSUS

1. The Maulana Azad National Urdu University Hyderabad,
Through its Registrar
2. Maulana Azad National Urdu University, College of Teacher Education, DRP Educational Campus, Opp. Taj Residency, Mahmoodpura, Rauza Bagh, Aurangabad-431001(M.S.)
Through its Chairman,
Admission Counselling-15
3. The Yeshwantrao Chavan Maharashtra Open University, Nashik
Through its Registrar
4. Director, Directorate of distance mode education,
Maulana Azad National Urdu University, Hyderabad
5. The University Grant Commission,
Bahadur Shaha Zafar Marg,
New Delhi 110002

..RESPONDENTS

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Mr S. T. Veer, Advocate for petitioner;
Mr S. V. Adwant, Advocate for respondent Nos.1, 2 & 4;
Mrs R. R. Mane, Advocate for respondent No.3;
Mr B. B. Kulkarni, Advocate for respondent No.5

**CORAM : SHANTANU S. KEMKAR &
NITIN W. SAMBRE, JJ.**

Reserved on : 18th August, 2017

Pronounced on: 11 October, 2017

JUDGMENT : [PER NITIN W. SAMBRE, J.]

The petitioner, a student, has questioned the order dated 23rd August, 2016 passed by respondent No.2-College rejecting the claim of the petitioner for admission to Bachelor of Education B.Ed.(Distance Mode), though he was selected in the third round of admission, on the ground that he is not qualified. The claim of respondent No.2 is, degree held by the petitioner of Bachelor of Arts from respondent No. 3 - Open University is upon pursuing two years course and as such, cannot be termed as degree within the meaning of Section 22 of the University Grants Commission Act, (hereinafter shall be referred to as 'the Act' for sake of brevity).

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2. The petitioner claimed that based on his earlier qualification i.e. H.S.C. in Urdu medium, he got admission to D.Ed. in Urdu medium and cleared the same. Forming diploma as basic qualification, the petitioner got admission to B.A. course in respondent No.3 - Open University in the year 2013. As the petitioner was holding basic D.Ed. qualification, as per Statute of respondent No.3 - University, he was granted admission directly to second year of B.A. degree course in Urdu medium, which he cleared in the year 2014 by securing first class. Having possessing migration certificate from respondent No.3 - Open University and got mark sheet of B.A. degree along with passing certificate, the petitioner applied for admission to respondent No.2 for B.Ed.(DM) course for academic session 2015-2016. The petitioner submits that he is serving on the post of primary teacher in recognized Urdu Primary School and was issued employment certificate by the Municipal Corporation of Parbhani certifying that he is serving in Urdu Primary School. The Headmaster of

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one Zakir Husain High school has also certified that the petitioner will be provided facility of carrying out practical work for B.Ed. Programme from their school.

3. Pursuant to the application for admission to B.Ed. Course, the petitioner appeared for entrance examination and secured 1232 rank in the merit list declared by respondent No.2. The petitioner was called for first and third round admission. The petitioner attended the same on 11th July, 2016 in respondent No.2 - College at Aurangabad. The petitioner along with demand draft of Rs.20,000/- drawn in favour of University, which was managing respondent No.2 - College, shown his willingness for admission, however, respondent No.2 rejected his candidature on the ground that the petitioner is not holding graduate degree, awarded after pursuing three years term. As such, this writ petition.

4. Mr. Veer, learned Counsel for the petitioner, while inviting attention of this Court

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to the certificate issued by respondent No.3 - Yashwantrao Chavan Maharashtra Open University, Nashik, dated 12th May, 2015, would urge that B.A. (Urdu Medium) degree is awarded to the petitioner after pursuing prescribed curriculum of B.A. course and has secured first class in the said examination. Along with said certificate, he has also relied upon other documents issued by the said University. In addition, learned Counsel would invite attention of this Court to the eligibility clause prescribed in the admission brochure of respondent No.2 - College, which provides that candidate with at least 50% of marks either in U.G.C. recognized University Bachelor Degree and/or in the Masters degree in Sciences/Social Sciences, Commerce and Humanity shall be eligible for admission. The said eligibility nowhere prescribed that the candidate must passed three years degree course. He would urge that respondent Nos. 1 and 2 have lost sight of the fact that the petitioner, on the basis of his Diploma in Education was granted admission by respondent No.3 - University directly to the second year B.A. course, which fact was not

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considered by the respondents while rejecting his candidature.

5. Per contra, Mr. Adwant, learned Counsel for respondent Nos. 1, 2 and 4 would invite attention of this Court to the University Grants Commission Regulation, 1985 dated 25th November, 1985, particularly sub clause (2) of clause (2) which reads thus :

"2(2) No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A./B.Sc./B.Com. (General Honours/Special) degree as the case may be.

Provided that no student shall be eligible to seek admission to the Master's Course in these faculties, who has not successfully pursued the first Degree Course of three years duration.

Provided further that, as a transitory measure where the universities are unable to change over to a three year decree course, they may award a

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B.A./B.Sc./B.Com. (Pass) degree on successful completion of two year course, but that no student of this stream shall be eligible for admission to the Master's course unless he has undergone a further one year bridge course and passed the same. The three year degree course after 10+2 stage should in no case be termed as B.A./B.Sc./B.Com. (Pass) degree."

6. According to him, since the petitioner has successfully completed two years of degree course, he shall not be entitled for admission to B.Ed. Course as prayed by him, as he lacks basic qualification of holding degree after qualifying three years degree course. In addition, he would also rely upon the provisions of U.G.C. (Minimum Standards of Instruction for the Grant of the First Degree through Formal Education) Regulations, 2003, particularly clause 8(1), which reads thus :

"8.1 No student shall be eligible for the award of the first degree unless he/she has successfully completed a programme, of not less than three years duration and secured the minimum number of credits prescribed by the university for the award of the degree."

7. According to him, in view of said clause and provisions of Section 22 of University Grants Commission Act, the petitioner cannot be termed to be qualified for admission to the B.Ed. Course having not completed B.A. Course with duration of minimum three years.

8. Respondent No.3 - Yashwantrao Chavan Maharashtra Open University has filed affidavit and supported the claim of the petitioner. According to respondent No.3 - University, the petitioner has completed B.A. degree course from the said University and he was admitted to B.A. course based on his qualification of H.S.C. D.Ed. The said University applied 'Credit Transfer Rule' and was granted admission directly to second year B.A. course. According to learned Counsel for respondent No.3, admission to B.A. degree Course and degree certificate awarded by respondent No.3 after petitioner persuaded B.A. Course for two years based on his H.S.C. D.Ed. qualification, is equivalent to B.A. degree awarded by any other

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statutory traditional university. So as to substantiate her contentions, respondent - University has relied upon the relevant Regulations which deals with admission to second year degree course in the case of petitioner, which provides that awarding credit points for pursuing of each year of degree course. The said Regulations provide that for each year, 36 credit points are awarded to a candidate as he was already holding basic qualification i.e. H.S.C. D.Ed. As such, the petitioner was admitted to second year B.A. course, by awarding 100% credit points i.e. of 36 points of B.A. first year.

9. She would then invite attention of this Court to the communication dated 5th May, 2004 issued by U.G.C., wherein it is provided that the University like respondent No.3 is empowered to award degree under Section 22(2) of the University Grants Commission Act, 1956. She would also rely upon communication dated 5th July, 2016, issued by respondent No.5 - University Grants Commission

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whereby University Grants Commission has approved the courses including that of B.A. conducted by respondent No.3 - University which are offered to the students through distant learning mode, in which, B.A. degree is very much approved at Serial No.66. According to her, respondent Nos. 1,2 and 4 are taking hyper-technical approach and according to her, the petition of the petitioner is liable to be allowed in toto, by rejecting the claim of respondent Nos. 1,2 and 4.

10. Learned Counsel for respondent Nos. 1, 2 and 4 has relied upon the following judgments:-

1. **Prof. Yashpal & Anr. Vs. State of Chattisgarh & Ors.** reported in (2005) 5 SCC 420,

2. **Annamali University Vs. Secretary to Govt.** reported in (2009) 4 SCC 590, so as to substantiate his contention that the petitioner lacks basic qualification, hence his candidature for admission to B.Ed. Course was rightly rejected.

Reliance is also placed on the judgment of Apex Court in the matter of ***Dau Dayal Mahila (P.G. College) Vs. State of U.P.*** reported in ***MANU/UP/2414/2013***, so as to substantiate the contention that admission cannot be granted contrary to the Regulation framed by University Grants Commission.

11. Having considered the rival submissions of the respective parties, it is required to be noted that respondent No.3 - University is created by virtue of Maharashtra Act XX of 1989 with an intention to introduce and promote Open University and distance education system in the educational pattern of the State. Sub Section (5) of Section-2 of the said Act defines 'distance education system' which reads thus :

"2 (5) "distance education system" means the system of imparting education through any means of communication such as broadcasting, telecasting, correspondence courses, seminars, contact programmes or

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the combination of any two or more of such means;"

Section 4 of the said Act provides for objects of the University, which reads thus :

"4. The objects of the University shall be to advance and disseminate learning and knowledge by a diversity of means, including the use of any communication technology, to provide opportunities for higher education to a larger segment of the population and to promote the educational well being of the community generally, to encourage the Open University and distance education system in the educational pattern of the State and the University shall, in organising its activities, have due regard to the objects specified in the First Schedule."

Section 5 of the said Act provides for powers of University and amongst other, it provides for plan and prescribed Courses of study of degrees, diplomas etc. and hold examination and confer degrees, as is apparent from sub sections (ii) and (iii) of Section 5, which read thus :

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"5.(ii) to plan and prescribe courses of study of degrees, diplomas, certificates or for any other purpose;

(iii) to hold examination and confer degrees, diplomas, certificates or other academic distinctions or recognitions on persons who have pursued a course of study or conducted research in the manner laid down by the Statutes and Ordinances;"

12. From the aforesaid provisions in the enactment by which respondent No.3 is created, it could be inferred that it has every statutory right and power to award degrees.

13. Apart from above, respondent No.5 - U.G.C. had an occasion to consider equivalence of degrees awarded by Open and distance learning institution at par with conventional university institution. In communication dated 14th October, 2013, issued by respondent No.5 - U.G.C., particularly in clause-2 following observations are made:-

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"2. A circular was earlier issued vide UGC letter F1 No- 52/2000(CPP-II) dated May 05, 2004 (copy enclosed) mentioning that Degrees/Diplomas/Certificates/ awarded by the Open Universities in conformity with the UGC notification of degrees be treated as equivalent to corresponding awards of the traditional Universities in the country."

14. The said communication is considered along with communications, produced on record by respondent No.3 - University along with its affidavit, which reflect the policy of respondent No.5 - U.G.C. as could be noticed from communication dated 5th May, 2004 onwards, it has to be inferred that degrees conferred by the Open University like respondent No.3, are approved by U.G.C., and are also recognized, as equivalent to the corresponding degrees awarded by conventional universities in the country.

15. The communication dated 5th July, 2016, issued by respondent No.5 - U.G.C., recognizing B.A. course conducted by respondent No.3 -

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University is not disputed. In the aforesaid background, what is required to be inferred is, degree of B.A. conferred by respondent No.3 - University is very much recognized and is at par with the degree issued by conventional university.

16. In the aforesaid background, the claim of the petitioner that qualification of H.S.C. D.Ed., was considered for admission to directly 2nd year B.A. course by respondent No.3 - University is concerned, respondent No.3 - University from its own documents, as are produced along with its affidavit, is able to demonstrate that it has every right and power pursuant to the provisions of Sections 21, 23 and 24, to frame Statutes, issue Ordinance and framed Regulations. Pursuant thereto, it is brought on record by respondent No.3 - University that petitioner's admission to direct second year B.A. course, was in tune with its policy of credit transfer rule, which is produced along with its affidavit at Annexure Exhibit R-1. The said credit transfer rule is not disputed by respondent Nos. 1, 2 and 4, but for plea raised by

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respondent No. 4 that it cannot be considered as recognized degree under Section 22 of the University Grants Commission Act.

17. Respondent No. 4 or respondent Nos. 1 and 2 are not in a position to bring on record as to how the credit transfer rule, framed by respondent No.3 which permits admission of a student based on his H.S.C. D.Ed., qualification to second year B.A. degree course, is illegal or not in tune with the requirement of University Grants Commission Act. Rather, the very provisions framed by respondent No. 3 in appropriate manner has decided to award credit points for each year qualification. Respondent No.3, as such, awarded total 108 credit points for B.A. course and for each year, same is divided in three parts awarding 36 credit points.

18. The petitioner's H.S.C. D.Ed. Course was considered by respondent No. 3, is worth awarding 36 credit points and particularly having regard to the subjects in which he has passed out his diploma.

19. Apart from above, the credit transfer rule is not questioned by respondent Nos. 1, 2 and 4.

20. From the aforesaid background, the contention of respondent Nos. 1, 2 and 4 that the petitioner lacks basic eligibility as having not possessing U.G.C. recognized graduate degree, is liable to be rejected. Apart from above, if the claim of respondent No. 4 of relying upon University Grants Commission Regulation 1985, dated 25th November, 1985, particularly sub-section (2) of Section 2 of the said Regulation, not recognizing the degree certificate other than one which is obtained after completing three years course, is read by the respondents, out of context in the aforesaid background. Apart from above, the Regulation dated 25th November, 1985 is already superseded.

21. So far as the citations as are relied upon by learned Counsel for respondent Nos. 1, 2 and 4 are concerned, it is required to be noted that the petitioner herein is not seeking admission by

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compromising admission rules, rather he has appeared for entrance examination, cleared the same and his candidature was rejected on technical ground that he is not possessing three years degree. As such, judgments relied upon by learned Counsel for respondent Nos. 1, 2 and 4 as cited herein before, are of hardly any assistance.

22. Apart from above, the recognition of admission to direct second year course in the stream like Engineering, Pharmacy etc., to a student, who has secured diploma in the said stream, is not under dispute from respondent No.4, provided said qualification are recognized by respondent No.5 - U.G.C. Applying the same analogy, credit transfer rule as demonstrated by respondent No.3 in its affidavit and having regard to the fact that indisputably, the petitioner holds basic qualification of H.S.C. D.Ed., while being admitting second year B.A. degree course, in our opinion, decision of respondent Nos. 1 and 2 in rejecting his candidature cannot be held to be justified. In the backdrop of above referred

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observations, it has to be held that the petitioner holds qualified degree of B.A., which is proper and appropriate for seeking admission to B.Ed. Course run and managed by respondent Nos. 1 and 2, to which, he claimed admission.

23. As such, in our opinion, writ petition stands allowed in terms of prayer clause (B) & (C) which read thus :

“(B) To issue the writ of certiorari or any other appropriate writ, order or direction in the like nature and the order dated 23.08.2016 passed by Chairman Admission Counselling-15 of Respondent No. 2 College rejecting the candidature of the petitioner for B.Ed.(DM) Degree may kindly be quashed and set aside.

(C) To issue the Writ of mandamus or any other appropriate Writ or direction in the like nature and the Respondents particularly the Respondent No. 2 may kindly be directed to give the admission to the petitioner for B.Ed.(DM) with them as per the selected list of third round in accordance with law.”

(NITIN W. SAMBRE, J.)

(SHANTANU S. KEMKAR, J.)