

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12637 OF 2017

Supriya Gopalrao Khiste,
Age 38 years, Occupation Housewife,
R/o. 183, Shivaji Nagar, Parbhani. .. Petitioner

VS.

- 1) The State of Maharashtra,
Through its Secretary,
Higher Education Department,
Mantralaya, Mumbai -32.
- 2) The Principal,
Marathwada Shikshan Prasarak
Mandal's Shri. Shivaji Law College,
Parbhani.
- 3) The Commissioner,
State Common Entrance Test Cell,
Maharashtra State, 305,
Government Polytechnic Building,
Kherwadi, Ali Yawar Jung Marg,
Bandra (E), Mumbai 400 051. ..

Respondents

Mr. R. J. Nirmal, Advocate for the petitioner.
Mr. S. B. Yawalkar, Additional Government Pleader,
for respondent No.1.
Mr. D. J. Choudhari, Advocate for respondent No.2.
Mr. M. P. Narwadkar, Advocate for respondent No.3.

**CORAM : R. M. BORDE &
SMT. VIBHA KANKANWADI, JJ.**
DATE : 05-12-2017

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Taken up for final hearing by consent of both the parties, at the stage of admission.
2. Heard learned Counsels all the parties.
3. Petitioner has invoked the extra ordinary writ jurisdiction of this Court under Art. 226 and 227 of Constitution of India for issuing writ of mandamus in order to direct respondent No. 2 College to admit her for LL. B Course of 3 years on the basis of B. A. (Sociology) degree of Yashwantrao Chavan Maharashtra Open University.
4. The factual matrix leading the petition are that the petitioner had completed her SCC examination in 1994 and completed B. A. in 1996 from Swami Ramanand Teerth Marathwada University, Nanded in 2000 with 41.61%. She has also completed Bachelor of Education in 2013 with 58.76%. Thereafter, she had decided to pursue another graduate degree with higher percentage and therefore, took admission with Yashwantrao Chavan Maharashtra Open University. She has completed the said course with 50% aggregate marks. The said University had directly admitted her to 3rd year B. A., as she had already completed three year B. A. degree from traditional University. Petitioner appeared for CET examination for law degree course and secured 42 marks. She had given option of CAP round. She was allotted Marathwada Shikshan Prasarak Mandal, Parbhani's Shri. Shivaji Law College, Parbhani. She reported to the College on 10-10-

2017 with relevant documents. However, respondent No. 2 College refused to admit her by giving reason that she does not possess requisite aggregate marks at graduation level. Respondent No. 2 had denied to consider the 50% marks of the Open University. She had tried to convince the authorities, still they refused to consider her request. She has stated that she is eligible to be admitted to the Course and authorities are wrongly interpreting the rules. Hence, she has approached this Court.

5. Shri. Waseem Ullah Khan, Assistant Professor has filed affidavit-in-reply on behalf of Respondent No. 2. It has been stated that 3 year course of LL. B. admissions are conducted by State Common Entrance Test Cell, Bandra, Mumbai. The admission broucher for the said course has been issued by competent authority, through Government Resolution dated 12-05-2017. Petitioner had completed 3 year degree course by securing 41.61% aggregate marks and therefore, she is not eligible for getting admission in 3 year course of LL. B. by virtue of Rule 4.1.1. Though she is stated to have secured 50 % marks in the course with Open University, the same can not be considered. As per the rules and explanation the candidate should possess qualification prescribed in the pattern 10+2+3 and also should have obtained prescribed marks in aggregate at U.G. degree examination. The petitioner is not fulfilling the said criteria and therefore, her admission with the College has been refused.

6. Learned Counsel for petitioner has taken us through the documents about the qualification of the petitioner. He submitted that Petitioner's marks in the degree course of the Open University should be considered as eligible for getting admission in respondent No. 2

College. The explanation given for the eligibility criteria states that -

“III. The applicant who has qualifying examination (UG or PG Degree) in a single seating examination without having basic qualification of (10+2+3) is not eligible for admission of three years LL. B. Course since the 10+2 is essential for law admissions”.

This rule would make it clear that who has passed the qualifying examination (UG or PG Degree) in a single examination with basic qualification (10+2+3) is eligible for admission to three years course. Petitioner has qualified and therefore her admission ought not to have been refused.

7. Per Contra, it has been submitted on behalf of respondents that as per the rules, petitioner has not secured prescribed marks. Her percentage of degree obtained from traditional University is required to be considered. Her marks from Open University can not be considered.

8. The petitioner has firstly completed her B. A. course, which is 3 year course from Swami Ramanand Teerth Marathwada University, Nanded with 41.61%. Rules 4.1.1 to 4.2.4. of the Admission rules would govern her eligibility for the admission. There is challenge to those rules in this petition. The aggregate marks of her B. A. course is required to be considered. Rule 4.1 deals with Education Qualification.

“4.1.1 Educational Qualification for Maharashtra State Candidates :

The candidate should be a Graduate and or Post Graduate in any faculty/ discipline of knowledge of any

University in Maharashtra established by an act of Parliament or by the 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, with minimum 45% Marks in aggregate for open category candidates (i.e. 45% for all the parts of the Degree Examination taken together), and 40% Marks in aggregate in degree examination in all parts of the Degree examination for candidates belonging to SC and ST category belonging to State of Maharashtra only.”

“4.2.2. The Candidate who has passed the 3 year undergraduate degree and or 2/3 years Post Graduate Degree from University mentioned in 5.2.1. above after prosecuting the studies in the educational pattern of 10+2+3 and or 10+2+3+2/3 years with regular studies at Secondary (SSC) and Higher Secondary (HSC) schooling.”

4.2.4. -----

Explanation :

i) If the Candidate has not obtained any of the qualifications prescribed in the pattern of 10+2+3, then he/ she will not be eligible for admission to any of the three year LL. B. Degree course. This means that candidate having Non-sequential Educational Qualifications will not be eligible for admission to LL. B.- 3 years CET/ Course.

ii) The candidate will be held eligible, if does not have

prescribed minimum percentage of marks in aggregate at U. G. Degree examination, but has obtained prescribed Minimum aggregate percentage at the P. G. degree examination provided, he/ she have prosecuted the study pattern in the 10+2+3 OR 10+2+3+2/3 format.

Iii) The applicant who has passed the qualifying examination (U. G. or P. G. degree) in a single sitting Examination without having basic qualifications of (10+2+3) is not eligible for admission to 3 year LL. B. course since 10+2 is the essential qualification for Law Admissions.

These are the relevant rules and further a note has been put that the aggregate marks means the Grand Total of marks obtained by the candidate at the Certificate/ Diploma / Degree in all semesters/ years on which the Class/ Grade is awarded by the Board/ University.

9. Following the above-said rule the aggregate of the petitioner is 41.61% in her B. A. course. Thereafter on the basis of her 42.54% aggregate marks in 1st and 2nd year B. A., she was directly admitted to 3rd year from Yashwantrao Chavan Open University. Therefore, there is substance in the say of respondents that Rules are required to be read in harmony and not in isolation. Merely because the degree of the Open University is treated equivalent, it will not give right to the petitioner to seek admission, because she was given direct admission to the third year by the open university on the basis of earlier examination results. The marks of those two years can not be counted twice. There is no substance in the say of the petitioner that

the percentage of her last year from Open University should be counted. The rule does not permit such segregation. When a specific note has been prescribed as to how the aggregate marks are to be calculated, then the admission can not be on the basis of performance of a candidate for a single year. The said note specifically prescribes to calculate grand total marks of all the semesters/ years. Here, the petitioner's first two years are common, since she was directly given admission in the third year by the Open University. Hence, when the rules do not permit any relaxation as contemplated by petitioner, those rules can not be relaxed by this Court in its writ jurisdiction.

10. The respondents have rightly refused the admission to the petitioner. No interference is required to be made in the said decision in the extra-ordinary writ jurisdiction of this Court. Therefore, the writ petition is dismissed with no order as to costs.

[SMT. VIBHA KANKANWADI]
JUDGE

[R. M. BORDE]
JUDGE

vjg/-.