

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10363 OF 2018

Mr. Melwyn Mathew Ponnattil	..Petitioner
Versus	
The State of Maharashtra and others	..Respondents

Mr. Siddhesh A. Pilankar h/f Mr. U. P. Warunjikar, Advocate for the Petitioner.

Mr. A. B. Vagyani, GP a/w Mr. V. M. Mali, AGP for the Respondent No.1 – State.

Mr. S. S. Patwardhan, Advocate for Respondent No.2.

Mr. R. A. Rodrigues, Advocate for Respondent No.4 – University.

**CORAM : B. R. GAVAI &
M. S. KARNIK, JJ.
DATE : 9th OCTOBER, 2018**

P.C.

1] Rule. Rule made returnable forthwith. Heard by consent of the parties.

2] The Petitioner has approached this Court being aggrieved by the decision of Respondent No.2 in cancelling the admission granted to the Petitioner in the Respondent No.5 Law College.

3] The Petitioner was desirous for taking admission to the

Law course and had appeared in the CET conducted by Respondent No.2 for the same. The Petitioner had secured 121 marks in the CET. However, since there are more than one candidates who had secured 121 marks, the marks obtained by the Petitioner and the other candidates in the SSC, HSC, Graduation and Post Graduation came to be considered for breaking the tie.

4] The marks mentioned by the Petitioner in the form with regard to his Post Graduation examination were 72.28 percent. On the basis of the result of the CET, the Petitioner was admitted in the Respondent No.5 college.

5] Subsequently, it was noticed that though the Petitioner had secured 72.28 per cent marks in his final examination, average of all the two years was 70.26 percent, as such his admission was liable to be cancelled.

6] We have heard Mr. S. S. Patwardhan, learned counsel for Respondent No.2 and Mr. R. A. Rodrigues, learned counsel for Respondent No.4 - University.

7] It appears that there is no uniformity in different Universities with regard to the basis on which marks of Graduation or Post Graduation are to be taken into consideration. While some of the Universities provide that marks obtained only in the last year should be considered as marks obtained in the Graduation or Post Graduation, some of the Universities provide that average of the marks obtained in all the examinations should be taken into consideration as marks while getting a degree. Even in so far as Respondent No.4 - University is concerned, till 2014 the system that was followed was that only the marks obtained in the last year were considered. Only after 2014, the University has now started a practice of taking into consideration marks obtained in all the examinations in the degree.

8] Undisputedly, the Petitioner has passed Post Graduation examination in the year 2012 i.e. prior to the norms being changed by the Respondent No.4 – University. No doubt that Mr. R. A. Rodrigues, learned counsel for Respondent No.4 – University states that since the admission of the Petitioner is after 2014, average marks will have to be taken into consideration as marks obtained in

the degree examination. However, it will be relevant to refer to stand taken by the University in Writ Petition No.10781 of 2018 :-

“Whereas Mr. Rodrigues would submit that the University Rules vary from course to course and since the Petitioner was an old pattern candidate, where the degree has been awarded on the basis of final year marks, and the said marks of the candidate are considered to hold him qualified and eligible.”

9] It could thus be seen that the University has taken a specific stand in the said matter, that when the degree has been awarded on the basis of old pattern, the marks obtained by the candidates in his final examination are to be considered as marks in the Graduate or Post Graduate course. In that view of the matter, it cannot be said that the Petitioner has given incorrect information. Since the Petitioner had passed the examination in the year 2012 i.e. prior to the norms being changed, he must be under the bonafide impression that only the marks obtained in the final year of Post Graduation will be considered as the marks obtained for the said degree.

10] Apart from that, we are informed by the Respondent No.5 that seat is vacant. In that view of the matter, we find that no

prejudice will be caused to any of the candidate, if the Petition is allowed.

11] In that view of the matter, Petition is allowed. The Respondents are directed to regularize the admission of the Petitioner for the first year LLB course.

12] The Petition is being decided considering the peculiar facts and circumstances of the case and without being treated as precedent.

13] We find it appropriate that at least all the Universities, which are under the control of State of Maharashtra, there should be some uniform practice as to whether the average marks are to be considered or as to whether final year marks are to be considered, so that such unnecessary situations are avoided.

14] Rule is accordingly made absolute in the above terms.

[M. S. KARNIK, J.]

[B. R. GAVAI, J.]