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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1441 OF 2014**

Shobha @ Neha Bhimrao Buddhivant ..Petitioner
Vs.
The Bar Council of India & ors. ..Respondents
.....
Mr. Nitin S. Satpute for petitioner.
Mr. Amit D. Sale for respondent No.1.
Mr. Rui Rodrigues a/w. Ms. Rimi Jain for respondent No.2.
.....

**CORAM : S.C. DHARMADHIKARI &
M.S. KARNIK, JJ.**

RESERVED ON : 8th MARCH, 2019

PRONOUNCED ON : 27th JUNE, 2019

JUDGMENT (PER M.S.KARNIK, J.) :-

Rule. Rule is made returnable forthwith by consent of the parties and heard finally.

2. By this Petition filed under Article 226 of the Constitution of India, the petitioner seeks to challenge the “Explanation” provided under Rule 5 of Rules of Legal Education, 2008 ('rules of 2008' for short) and Circulars L.E.

CIR. 02/2010, dated 20/12/2010 and BCI:D: 1823/2010, dated 30/11/2010 issued by respondent No.1 – the Bar Council of India.

3. The petitioner prays for a direction to respondent No.2 – University of Mumbai to enroll the name of the petitioner for First Year LL.B. in three year Law Course since 17/8/2011, through respondent No. 3 – The New Law College and consider petitioner's admission from the date of actual receipt of payment of admission fees i.e. 17/8/2011. The petitioner further prays for a direction to respondent Nos. 2 and 3 to allow the petitioner to appear for the examination of first semester in the year 2014 for three year LL.B. Course.

4. The Petition came to be amended and the petitioner has also prayed for quashing and setting aside the letter dated 8/9/2015 and for restoration of her admission with respondent No. 3.

5. The facts of the case in nutshell are as under :

The petitioner completed her graduation in Bachelor of Arts (B.A.) in the year 2005 through distance learning system imparted by respondent No. 4 – Yashwantrao Chavan Open University ('Open University' for short), Nashik. The petitioner is seeking enrollment with respondent No. 2 – University of Mumbai for the first year LL.B. (three year course) through respondent No.3 – The New Law College.

6. Education details of the petitioner are material for deciding the controversy. She passed S.S.C. in the year 1990. She passed F.Y.J.C. in the year 1991. She appeared for H.S.C. in the year 1992, but failed. She appeared for the Preparatory Course Entrance Written Test of the Open University, Nashik which was necessary qualification and eligibility for the admission for F.Y.B.A. of the Open University. She completed her B.A. from the Open University in the year 2005. The petitioner decided to pursue LL.B. Course. She was admitted by respondent No.3 which admission procedure was completed on

18/8/2011. However, on the next day i.e. on 19/8/2011, the petitioner was called to be informed by respondent No.3 that she cannot be admitted with respondent No.3 and enrolled with respondent No.2, due to implementation of circulars (which are mentioned in paragraph 1) issued in accordance with the rules of 2008.

7. The objection on the basis of the “Explanation” to Rule 5 of the Rules of 2008 is that those who have obtained 10+2 or graduation through Open University system directly without having any basic qualifications for prosecuting such studies are not eligible for admission in law courses. She was formally informed by respondent No. 3 – College that according to the rules framed by the Bar Council of India and as accepted by the University of Mumbai, the candidate who passed Degree Examination after prosecuting studies in distance or open learning without having passed H.S.C. Examination (being the basic qualification for prosecuting degree studies) cannot be admitted to the Three Year Degree Programme. This letter is

dated 8th September, 2015.

8. As the petitioner does not possess the basic qualification of H.S.C., she is held not eligible to take admission to LL.B. Course.

9. Learned Counsel for the petitioner submits that the “Explanation” to Rule 5 of the Rules of 2008 is arbitrary and unjustified. He would submit that the Rules of 2008 cannot be applied retrospectively. According to him, the petitioner had already graduated in the year 2005 from the Open University and as per the rules prevailing then she was eligible for admission to LL.B. Course on the strength of her graduating from the Open University. He would therefore submit that the Rules of 2008 will not apply to the petitioner. In his submission, respondent No.4 – Open University is established and incorporated by a legislation titled as “The Yashwantrao Chavan Maharashtra Open University Act, 1989” (“the Act of 1989” for short) and after its notification in the official gazette, it has force of law.

10. Relying on the provisions of the Act of 1989, learned Counsel would submit that the Act of 1989 specifically empowers the University to determine the manner in which distance education in relation to the academic programmes of the University may be organized ; to confer honorary degrees, in the manner laid down by the Statutes ; to hold examination and confer degrees, in the manner laid down by the Statutes and Ordinances. He would submit that once the degree is conferred by the Act of 1989, then the explanation to Rule 5 is clearly arbitrary and contrary to law in the teeth of the provisions of the Act of 1989.

11. Learned Counsel for petitioner would rely upon the decision of the Full Bench of the High Court of Madras in the case of **G.S. Jagadeesh vs. The Chairman in Writ Petition No. 32984 of 2016** to support his submission that once a recognized university or a recognized board issues a certificate, it is not for any other authority to question the certificate on the ground of ineligibility to obtain the certificate, until and unless the

certificate is cancelled by an appropriate authority and/or by a Court of law .

12. Per contra, learned Counsel for the respondent No.1 by inviting our attention to the “Explanation” to Rule 5 submits that the said explanation in terms does not make the petitioner eligible to take admission in law courses. Learned Counsel for respondent No.1 though submitted that on the basis of graduation degree obtained from the Open University, the candidate is eligible for admission to three year law course. He however, submitted that the candidate would be rendered ineligible if he has obtained the graduation from the Open University without obtaining basic eligibility of H.S.C. which is a recognized 10+2 pattern of education for the purpose of getting admission to the law courses. He, however, fairly submits that the decision of the Madras High Court in the case of **G.S. Jagadeesh** (*supra*) has been accepted and acted upon by respondent No.1 – Bar Council of India.

13. Having heard learned Counsel for the parties, the

issue that arises in the present Petition did call for a debate at the time of the filing of the Petition. This issue is now no more *res-integra* in view of the decision of the Full Bench of the Madras High Court in **G.S. Jagadeesh's case**. No doubt, the same cannot be regarded as binding on this Court. The same is only of persuasive value. Learned Counsel for respondent No.1 on instructions, submitted that this decision has been accepted and acted upon by respondent No.1. The issue that arises in the present Petition has been considered elaborately in **G.S. Jagadeesh's case**.

14. We have gone through the said decision and find ourselves in respectful agreement with the view taken. For convenience we would just refer to few passages from the said decision, which read thus :

41. There is a difference between open universities and other universities and/or boards, in that some of these open universities enable candidates, who do not have the basic qualifications, to obtain higher qualifications straightaway. By prosecuting studies through open universities, it may be possible for a candidate to obtain a Post Graduate Degree or a Three Year LLB Degree without being a graduate or to obtain a graduate degree without having the Senior Secondary School Certificate. In our view, the Bar Council of India, in its wisdom framed the Legal Education Rules making a graduate degree upon prosecution of a regular course from a university, whose degree in Law is recognized by the Bar Council of

India, in a mandatory eligibility criteria.

42. Had it been the intention of the Bar Council that for admission to Three Year LLB Course a candidate would be required to obtain all the previous requisite degrees and certificates, such as the Secondary School Certificate and Senior Secondary School Certificate, by prosecuting a regular course, the Legal Education Rules would have specifically provided so.

43. The language and tenor of Rules 5(a) and 5(b) read with the first proviso and the Explanation make it amply clear that prosecution of a regular course is mandatory only for the immediately previous qualifying certificate and/or degree, for example, graduate degree for the Three Year LLB Course and Senior Secondary Certificate for the Integrated Degree program. Had the Rules intended otherwise, the Rules would have specifically provided that candidates would not be eligible for admission to the Three Year LLB unless they had obtained the Secondary and Senior Secondary Certificates upon prosecution of studies through a regular course or through distance or correspondence mode. The Bar Council of India has, in its wisdom, chosen to frame rules whereunder prosecution of a regular course is mandatory only in respect of the Senior Secondary Certificate for admission to the Integrated Degree Course and in respect of graduation for admission to the Three Year LLB Course.

44. We are also of the view that once a recognized university or a recognized board issues a certificate, it is not for any other authority to question the certificate on the ground of ineligibility to obtain the certificate, until and unless the certificate is cancelled by an appropriate authority and/or by a Court of law. To hold otherwise would be to open the Pandora's box, for years later certificates might be questioned on grounds such as inadequate attendance, failure to clear internal test examinations and the like and it would be impossible for candidates possessing the degree and/or certificate to adduce cogent materials and/or evidence to satisfy those questioning the certificates. When a regular certificate is granted by a recognized board, there is a presumption that the candidate was eligible to be conferred the certificate.

15. In this context a profitable reference can be made to the decision of the Apex Court in the case of **Kusum Ingots & Alloys Ltd. vs. Union of India and another – (2004) 6 SCC**

254. Paragraphs 21 and 22 of the said decision read thus :

“21. A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in a vacuum.

22. The Court must have the requisite territorial jurisdiction. An order passed on a writ petition questioning the constitutionality of a parliamentary Act, whether interim or final keeping in view the provisions contained in clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.”

16. In this view of the matter also the order passed by the Full Bench of the Madras High Court will have effect throughout the territory of India as there is no dispute that the Act is applicable throughout the territory of India.

17. In the present case, though petitioner failed H.S.C., the petitioner obtained graduation certificate as B.A. from the Open University established under the Act of 1989. It is after obtaining the graduation from the University recognized under the Act of 1989 that petitioner applied for admission to three year law degree course. Even as is the submission of respondent No.1, it is not as if the candidate who has completed graduation from the Open University is ineligible for admission to three year law course.

18. The petitioner had failed 12th standard examination. However, as provided by the Rules and Statutes of the Act of 1989, she passed in Preparatory Course Entrance Written Test which made her eligible for admission for F.Y.B.A. course in Open University. This being the position, the objection of respondent No.1 that petitioner has not passed H.S.C. from the regular channel is of no consequence. The petitioner obtained graduation from a recognized University established under the Act of 1989.

19. It is unjust that the candidate concerned is still required to pass the basic eligibility of H.S.C. from recognized Board/University despite completing graduation from Open University. As the issue has been answered in the case of **G.S. Jagadeesh** which decision is accepted and acted upon by respondent No.1 – Bar Council of India, even the present Petition deserves to be allowed in same terms.

20. The Writ Petition is, thus, allowed.

21. The petitioner shall be admitted to the ensuing session of Three Year Law Course, if the petitioner is still interested in taking admission, subject to compliance with all requisite formalities for obtaining admission.

22. Rule is made absolute with no order as to costs.

(M.S. KARNIK, J.)

(S.C. DHARMADHIKARI, J.)