

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2719 OF 2019

Purva Siddharth Ingle

.... Petitioner

Vs.

The State of Maharashtra & Others

.... Respondents

AND

WRIT PETITION NO.2720 OF 2019

Vinay Hukumchand Kothari

.... Petitioner

Vs.

The State of Maharashtra & Others

.... Respondents

Mr. Rashid Khan i/by Mr. Siddharth S. Ingle for
the Petitioner in both petitions.

Ms Geeta R. Shastri, Addl. GP, for Respondent
No.1-State in both petitions.

Mr. Shriniwas S. Patwardhan for Respondent
Nos.2 & 4.

CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

DATE : NOVEMBER 04, 2019

P.C:

1. Affidavit is taken on record.
2. In these two petitions under Article 226 of the Constitution of India the only contention raised is that, midway or after the process had commenced, Rules and Regulations have undergone a drastic and radical change. The contention is there was no requirement of obtaining 45% marks in each year

of the graduation study so as to become eligible for appearance at a Common Entrance Test (“**CET**”) or if not the CET, participate in the Centralised Admission Process (“**CAP**”). The arguments run like this. That the petitioners were informed at the time of their appearance at the CET and seeking admission to the Three Year Law Degree Course that they would have to obtain minimum 45% marks in each of the years of the degree course which they have completed, resulting in the degree being awarded to them and it would be enough if they have passed that degree course. In other words, that every year they should obtain 45% marks minimum and then alone that degree course and that degree would qualify for admission to the Three Year LL.B. Course was not the condition prescribed. The petitioner in the second petition, Vinay Hukumchand Kothari, is a graduate and has completed a degree course in the year 2001. There was no condition prescribed that he would not be able to obtain admission to the Law Degree Course should the percentage in the Three Year Degree Course fall below 45% in any one year. If he had the minimum percentage at the University examination, he would be declared passed and awarded the degree. On the strength of that degree, he could have obtained admission to a Law College. Indeed he had obtained admission but in the First Year of such a Law Degree Course (Three Years) he failed. Thereafter, the CET and CAP were introduced and with the stipulation of the minimal 45%

marks in each year of the degree course to be obtained. The petitioner is a helpless student in such a situation, for he will never be able to fulfil this condition which is prescribed for the current academic year and that too midway. Similar contention is raised on behalf of the other student (petitioner in the first petition) and her grievance is that, when she filed her Online Application Form for the CAP for admission to the First Year of the Three Year Law Degree Course, on the website the marksheets and the marks obtained in the degree course had to be alone uploaded and thereafter there was no requirement of specifying the aggregate percentage in the degree course examination. Such a condition is introduced midway. Therefore, both the petitioners, according to the counsel appearing for them, would qualify and cannot be excluded from the admission process. All the more, when there are vacant seats.

3. It is not possible to agree with the counsel for more than one reason. Firstly, we want to dispel the impression and gaining ground very fast that this Court in its writ jurisdiction can bring about an alteration or change in the Rules and Regulations or relax their rigour simply because it is inconvenient for some students or candidates to comply with them. The candidates or students seeking admission to professional degree courses ought to be aware that the best and the meritorious should join such professional courses and

obtain professional degrees, for tomorrow they all project themselves to be qualified and educated professionals competent enough to deal with cases involving complete legal issues so also giving advice and opinion to litigants. There cannot be any compromise with the standards and norms prescribed as public interest and the interest of the institution is at stake. If the best and the most competent are not available to redress the grievances, particularly about legal rights and complicated legal issues concerning such rights, then, it is the justice delivery system which suffers. Then justice is a casualty. There cannot be any compromise in this regard and in our writ jurisdiction we will not issue any writs contrary to the Rules and Regulations. If there is no power or there is no provision enabling a deviation or departure, or dilution of the rigour of the rule, then, in writ jurisdiction our writ will not introduce such a stipulation. In the absence of express stipulation in that regard, we will not, therefore, issue any writ, much less a prerogative one directing the State and the academic bodies to grant admissions by departing or deviating from the Rules.

4. In writ jurisdiction, we must and we ought to promote truth, honesty and justice. If justice is not in favour of the candidates, then nothing can be done to help them.

5. In the instant case, it is erroneous to argue that the

petitioner Vinay Hukumchand Kothari is a helpless candidate and cannot ever fulfil his dream of becoming a Lawyer. In fact, before the CET and the CAP were introduced, this candidate had joined a Law College on the strength of his marks obtained in the degree examination. However, in the First Year of the Three Year Law Degree Course, he failed. There cannot be any prohibition against participating in the admission process again but in the fresh round this student or candidate is confronted with a Rule having the force of a Law. In the year 2015, a Law was brought in which empowered the State of Maharashtra and its Department of Higher and Technical Education to introduce a CAP. Preceding that CAP, there is a CET which is prescribed at which all aspirants and candidates have to appear and after clearing that they are eligible to enter the CAP. Before that CAP as well there are clear stipulations and merely because the CET is cleared, that does not mean admission is guaranteed. For the admission to be secured, every student must fulfil the eligibility criteria. In this case, the eligibility criteria from inception is as under:-

“3.2 Educational Qualification:-

(a) Candidate should be a graduate in any faculty of any University in Maharashtra 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, With Minimum 45% of Marks in aggregate (That is 45%

marks for all the parts of the Degree Examination taken together), (candidate belonging to SC and ST Category need only 40% marks and VJNT, SBC and OBC Category with minimum 42% marks in the qualifying examination.)

(b)

“Government of Maharashtra
STATE COMMON ENTRANCE TEST CELL,
MAHARASHTRA STATE, MUMBAI.
Information Brochure for Centralized Admission
Process (CAP)
of
First Year of Three Year Degree Course in Law
leading to LL.B. (3 Yrs.)
(Regular - Full Time – Course)
Academic Year:- 2019-2020.

(o) **“Qualifying Examination”** means examinations on the basis of which a Candidate becomes eligible for admission or its Equivalent Examination;

(p)

(q) **“Supernumerary Seats”** means seats which are over and above the Sanctioned Intake approved by the appropriate authority and the Government, from time to time.”

“7.2 Eligibility Criteria for LLB-3 Yrs. Course:

Eligibility Conditions and requirement for admissions to LL.B-3 Full time Regular Undergraduate Degree Course are detailed below:-

A. For Maharashtra State Candidature Candidates:-

1) The candidate should be an Indian National and -

(a) Candidate should be a graduate in any faculty of any University in Maharashtra 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, With Minimum 45% of Marks in aggregate (That is 45% marks for all the parts of the Degree Examination taken together), (candidate belonging to SC and ST Category need only 40% marks and VJNT, SBC and OBC Category with minimum 42% marks in the qualifying examination.)

- (b)** *An applicant who has passed the U.G. degree and 2/3 years P.G degree from University mentioned in (a) after processing the studies in the pattern of 10+2+3+2/3 with regular studies at secondary and higher secondary schooling:*

Provided that, the applicants who have obtained +2 Higher Secondary Pass Certificate or First Degree Certificate by distance or correspondence method shall also be considered as eligible for CET of the 3 Years Law Courses. [The applicant who has passed the qualifying examination (10+2, U.G. & P.G.) in a single sitting examination without having basic qualifications of (10+2+3) is not eligible.]

Further provided that, no candidate from the open University having a degree contrary of the U.G.C. Act and regulations and contrary to Rules of Legal Education shall be eligible.

Further provided that, the candidates who are appearing/appeared for the qualifying examination (regular examination of that academic year) are also eligible to apply for the Entrance Examination. Such candidates become eligible for admission only if they produce the provisional/Degree certificate of the qualifying examination and the mark lists of all parts of qualifying examination at the time of admission.

- 2) (Non Zero Score in MAH-LLB-3 Years 2019 CET conducted by the Competent Authority.**

Explanation:-

- (1) *Candidate should have passed Graduate and or Post Graduate/Qualifying Examination from the State of Maharashtra. As regards Minimum percentage of Marks in the Graduation and or Post Graduation, qualifying examination as the case may be, the candidates must have secured:*
 - (a) *Forty-Five Percent (45%) marks in Aggregate (That is 45% marks for all the Parts of the Degree Examination taken together) in qualifying examination in case of candidates belonging to General (Open) /S.E.B.C./E.W.S./Orphan Candidates from the State of Maharashtra.*
 - (b) *Forty-Two Percent (42%) marks in Aggregate (That is 42% marks for all the Parts of the Degree Examination taken together) in qualifying examination in case of candidates belonging to VJ/ DT/ NT(A)/ NT(B)/ NT(C)/ NT(D)/ O.B.C./ S.B.C. Category belonging to State of Maharashtra.*
 - (c) *Forty Percent (40%) marks in Aggregate (That is 40% marks for all the Parts of the Degree Examination taken together) in qualifying examination in case of Candidates belonging to SC&ST Categories from the State of Maharashtra only.*
- (2) *Three-year graduation degree in any faculty issued by any University recognized by UGC and following a 10+2+3 education pattern is a must for admission of three-year law course.*
- (3) *The qualifications of 10th, 12th (+2) and Graduation may be obtained through any mode (distance / correspondence / open schooling method). Such candidates are eligible for LL.B-3 Year Course.*
- (4) *Candidate obtained bachelor degree from any open University with Preparatory examination without passing HSC are not eligible for LL.B-3 year Course & admission of LL.B-3 Year Course.*

[W.P.12192/2018 Hon'ble Aurangabad High Court Order.]

- (5) *Candidate should have completed any 3 Year bachelor degree from any open University (recognized by UGC) after passing 12th Std. (HSC). Such candidates are eligible for LL.B-3 year Course.*
- (6) *Those candidates who have passed 12th Std. (HSC) after Graduation and or Post Graduation are not eligible for admission of LL.B-3 year Course since their qualification is Non-Sequential.*
- (7) *Basic qualification for admission into Three Year Law Course will be 12th (+2) which shall be required to be followed by three-Year graduation and or two or three Years Post Graduation.*

Reference:- Minutes of the meeting The Legal Education Committee, Dated 30th April, 2017.

- (8) ***Candidate seeking admission into Three Year Law course must have passed class 12th (HSC) as it is the Basic Qualification for the 3 year law course without passing which, he or she cannot be considered eligible for LL.B-3 year Course.***

Note: The Percentage of marks shall not be calculated by rounding off to nearest Integer."

6. The candidate, Vinay Hukumchand Kothari, admittedly, took his chance and appeared when the stipulations reproduced above were specifically inserted. The Academic Year 2019-2020 witnessed the introduction of the above noted and reproduced conditions. None can, therefore, say that "I am helpless because I am the holder of a Bachelor of Commerce Degree or a Commerce Graduate of the year 2001". "Therefore,

I cannot now go back and satisfy a criteria of minimum 45% marks for each year in this Bachelor of Commerce Degree Course which is of 3 years duration". Therefore, the candidate now says that he cannot now satisfy this newly introduced criteria.

7. We are unable to accept this contention for the simple reason that the Rules in place are those notified on 4-6-2019. They have been intimated to all well in advance and when the Academic Year 2019-2020 was to commence. The CAP follows the CET and the CET information brochure is of January, 2019. The petitioner, therefore, was aware that if he is unable to fulfil this criteria, his appearance in the CET and his success therein is of no avail. He can never become an Advocate for he can never be admitted in any college in this CAP for the Academic Year 2019-2020. That he falls marginally short of the 45% benchmark and if the percentage is 44.95 and rounded off to 45, he can still be admitted for there are many vacant seats, is an argument in desperation. Besides this, there is a Rule to the contrary. There is a Rule against rounding off rather than permitting rounding off. If any reference is required to be made, it should be made to the Notification of the Government of Maharashtra dated 4-6-2019 which has been expressly relied upon in the case of this candidate - Vinay Hukumchand Kothari. At page 181 of the paper-book, there

appear explanations and Explanation-3, in clearest terms, says that the percentage of marks shall be calculated by rounding off to nearest integer (Except Law Courses). Therefore, there is a condition to be fulfilled. The condition demands strict compliance. The compliance not being there in the terms prescribed, we cannot introduce Vinay Hukumchand Kothari in the CAP. The student, therefore, may have lost an opportunity to become a Lawyer but in writ jurisdiction we cannot make an exception for him. The student must accept the Rule and there is no fundamental or vested right in a rounding off. A candidate who has failed or has not fulfilled the minimum prescribed standard or benchmark, cannot request a Writ Court to round off his percentage to the nearest so that he can fulfil the eligibility requirement or criteria. We do not think that writ jurisdiction is meant for serving such a purpose or to enable such students to introduce themselves in Law courses. The impression that is given to the public at large that for becoming a Lawyer you need not have to possess the basic academic qualification nor you are required to fulfil the basic standards and norms, should be dispelled forthwith.

8. The writ petition filed by Vinay Hukumchand Kothari is therefore without any merit and deserves to be dismissed. It is accordingly dismissed.

9. Once the view that is taken in this case also covers the case of the other candidate, namely, Purva Siddharth Ingle, then even her petition is liable to be dismissed. It is apparent that the Government of Maharashtra Gazette, Extraordinary, Part-IV-B, Extraordinary No.138, dated 19-5-2018 is referred in the information brochure for the CET, containing a requirement of obtaining minimum 45% of marks in aggregate (that is, 45% marks for all parts of the degree examination taken together). Then, at the threshold the candidate is aware that even if he or she succeeds in the CET, the admission through the CAP is not secured or guaranteed much less an axiom. One will have to fulfil the criteria prescribed by the information brochure of the CAP. That is clear from page 76 of the paper-book in Purva's petition enlisting this eligibility criteria. Further, there is a Notification of 4-6-2019 notifying the Rules. There is also a criteria not permitting rounding off. In such circumstances, Purva's case is no different and therefore must be dealt with in the same manner.

10. For the aforesaid reasons, even Purva's petition deserves to be dismissed and it is dismissed. There will be no order as to costs in both petitions.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)