

CWP No.9773 of 2017

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CM No.15245 of 2019 in/and
CWP No.9773 of 2017 (O&M)**

Date of Decision: 14.10.2019

Kitti Chhabra

...Petitioner

Vs.

Bar Council of Punjab and Haryana through its Secretary and another

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Lalit Kumar Sharma, Advocate
for the petitioner.

Mr. Jasjeet Singh Dhaliwal, Advocate
for respondent No.1.

RAJIV NARAIN RAINA, J. (Oral)

CM No.15245 of 2019

Application is allowed. Short reply by way of affidavit on behalf of respondent No.1 is taken on record.

CWP No.9773 of 2017

1. In the written statement filed by respondent No.1/Bar Council of Punjab and Haryana, it has been categorically asserted on the strength of Section 7 of the Legal Education Rules, 2008 (in short 'LER') framed by the Bar Council of India, New Delhi that a law graduate candidate to be admitted to the rolls of the Bar must possess minimum 45% marks in graduation. The petitioner fails to achieve the benchmark as she has secured 44.70% marks in

Graduation and 40.87% in Post-Graduation, with both the law degrees obtained from the Panjab University, Chandigarh. By clarification issued vide resolution dated 12/13.09.2009 passed by the LER it has been maintained that person who scores below 45% at the Graduation level in LL.B but possesses more than 45% marks at the Post Graduation level in law is eligible to take admission in three year law course, can apply for licence if he is otherwise qualified as per the rules of the Bar Council of India. The relaxation in the resolution also fails to come in aid of the petitioner as she has not qualified her post graduation with the minimum prescribed qualifying marks. Furthermore, this clarification takes us to Rule 7 of The Rules of Legal Education, 2008 framed by the Bar Council of India which reads as below:

“Rule 7. Minimum marks in qualifying examination for admission:-

Bar Council of India may from time to time, stipulate the minimum percentage of marks not below 45% of the total marks in case of general category applicants, 42% for OBC category and 40% of the total marks in case of SC and ST applicants, to be obtained for the qualifying examination, such as +2 examination in case of integrated five year course of degree course in any discipline for three year LLB Course for the purpose of applying for and getting admitted into a law degree program of any recognized university in either of the streams.”

2. There is a bar on the Bar Council of India placed by itself not to entertain applications for licence to candidates who secure percentage of marks below 45% in the General Category.

3. Learned counsel for the petitioner tries to make use of the Proviso to Rule 7 arguing that the minimum qualifying marks shall not automatically disentitle the person to get the admission but only enjoins the person to fulfill the conditions in the institutional criteria evolved by the institution concerned or by the Government to apply for admission (in this case institution refers to 'Panjab University'). As I read the Proviso, it means that the minimum qualifying marks is base bottom line of 45% and it is within the authority of the Bar Council of India to prescribe percentage higher than 45% marks in the qualifying examination. In other words, the Bar Council has the discretion to fix marks above 45% under Rule 7 as the minimum required for licence but it has self imposed restrictions in lowering merit in the educational qualifications of LL.B. And LL.M below 45% in the aggregate of marks.

4. Drawing authority from Section 7(1) (b) of the Advocates Act, 1961, Mr. Brar appearing for the local Bar Council has brought attention to the case of one Ram Kishore in the written statement. Ram Kishore obtained a degree in law from the Panjab University in April 2012. He had secured less than 45% marks in the qualifying examination specified under Rule 7 of Legal Education Rules i.e. in graduation and post graduation. The Bar Council refused to enroll Ram Kishore as an Advocate. He did not possess the minimum qualifying marks. Bar Council of India had issued a show cause notice dated 27.05.2015 to the Panjab University, Chandigarh to explain under what circumstances the University had admitted the candidate against the mandate of Rule 7 of LER to the LL.B course of study. That communication is attached with the written statement. The case of the

petitioner is identical to the case of Ram Kishore.

5. There is another case cited in the written statement with the Bar Council of India seeking a clarification with regard to rounding off 44.5% to 45% obtained by an applicant, namely, Surjeet Singh in qualifying marks for seeking admission in LLB degree course. The Bar Council decided against the request for rounding off marks to the nearest whole number holding there is no such provision in law available to make any relaxation.

6. Learned counsel for the petitioner also argued that if the Panjab University thought it fit to admit the petitioner to its LLB course and she has qualified the examination albeit with marks less than 45%, then per force, Bar Council should be bound by the admission for award of licence to practice law. I am unable to be persuaded to accept this argument as the purposes of admissions to the LLB course and admission to the rolls of Bar Council are not one and the same thing. It is open to the petitioner to make a career in teaching etc and use her degree elsewhere but the Bar Council of Punjab and Haryana and the Bar Council of India is rightly not prepared to concede to the request. He further submits that if the petitioner has got admission according to educational standards prescribed by the Panjab University then the petitioner cannot be punished for the fault of the University. The fault theory is misplaced in cases of admission to the rolls of the Bar Council and who should be advocates recognized by the law course to wear the gown.

7. Having given a careful consideration of my interim order dated 30.09.2019 when this Court issued notice of motion, I have no doubt that the disambiguation in Clauses (a) (b) (c) of the prospectus of the Panjab

University Calendar 2009 is not binding on the Bar Council for whatever it means or implies.

8. To this Mr. Brar adds that Bar Council had notified the Institution not to depart from the prescribed norms and therefore, the petitioner cannot be heard to succeed on the ground that she is not at fault.

9. In view of these circumstances, it is not possible to accept the request of the petitioner only on the ground that her career would be ruined and she would not be able to practice as an Advocate in courts of law. No ground for interference is made out.

10. The petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

14.10.2019
kv/Vimal

Whether speaking/reasoned : *Yes*
Whether reportable : *Yes/No*