

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.31161 of 2019 and
W.M.P.Nos.4906 and 31287 of 2019

M.Krishnakumar

... Petitioner

Vs.

The Registrar cum Chairman,
The Tamil Nadu Dr.Ambedkar Law University,
3 Year L.L.B. Admissions, 2019-2020,
Poompozhil, No.5, Dr.D.G.S. Dhinakaran Salai,
Chennai 28.

... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Mandamus, directing the respondent to admit the petitioner in the 3 year L.L.B. Degree Course in the academic year 2019-2020 and pass orders.

For Petitioner : Mr.R.Jayaprakash

For Respondents : Mr.V.Vasanth Kumar,
Standing Counsel for R1

O R D E R

This writ petition has been filed for the issue of writ of Mandamus directing the respondents to admit the petitioner in the 3 year L.L.B degree course during the academic year 2019-2020.

2.The case of the petitioner is that he had completed SSLC (10th) in the year 2010 and thereafter, he completed the Higher Secondary Course (+2) in the year 2014. The petitioner thereafter completed three years BCA Degree Course in the year 2017 through Distance Education mode from Tamil University, Thanjavur. The petitioner applied for the three year L.L.B. Degree Course under the MBC category and the petitioner has also obtained necessary cut off marks.

3.At the time of counselling, the petitioner was informed that he was not eligible to be considered for selection for the 3 year L.L.B Course on the ground that the petitioner did not satisfy the requirements under Rule 5 of the Bar Council of India Rules. Aggrieved by the same, the present writ petition has been filed before this Court.

4.The learned counsel appearing for the petitioner submitted that even though the petitioner will not be able to get any admission for the academic year 2019-2020 since the academic year itself is over, the petitioner can again participate in the selection process for the academic year 2020-2021. At that point of time, very same ground now raised, should not be put against the petitioner and therefore, the learned counsel submitted that this Court can render a finding on the main issue and insofar as the final relief is concerned, it can be declared to be infructuous. The learned counsel submitted that the Full Bench Judgment of this Court, in the case of Mohammed Mustafa vs. the Chairman, Tamil Nadu Dr.Ambedkar Law university and two others in W.P.No.31043 of 2017 dated 13.03.2018, covers the issue that is involved in the present writ petition. To substantiate his submission, the learned counsel relied upon certain portions of the judgment, which is extracted hereunder:

"9. In exercise of power conferred by the Advocates Act, 1961, the Bar Council of India has framed Rules of Legal Education in consultation with Universities and State Bar Councils. Rules 5, 6 and 7 of the Bar Council of India Rules of Legal Education, hereinafter referred to as "Legal Education Rules", provide as follows:

"5. Eligibility for admission.- (a) Three Year Law Degree Course: An applicant who has graduated in any discipline of knowledge from a University established by an Act of Parliament or by a State Legislature or an equivalent national institution recognised as a Deemed to be University or foreign University recognised as equivalent to the status of an Indian University by an authority competent to declare equivalence, may apply for a three years' degree programme in law leading to conferment of LL.B. Degree on successful completion of the regular program conducted by a University whose degree in law is recognised by the Bar Council of India for the purpose of enrolment.

(b) Integrated Degree Programme: An applicant who has successfully completed Senior Secondary School course (+2) or equivalent (such as 11 + 1, 'A' level in Senior School Leaving certificate course) from a recognised University of India or outside or from a Senior Secondary Board or equivalent, constituted or recognised by the Union or by a State Government or from any equivalent institution

from a foreign country recognised by the Government of that country for the purpose of issue of qualifying certificate on successful completion of the course, may apply for and be admitted into the program of the Centres of Legal Education to obtain the integrated degree in law with a degree in any other subject as the first degree from the University whose such a degree in law is recognised by the Bar Council of India for the purpose of enrolment.

Provided that applicants who have obtained +2 Higher Secondary Pass Certificate or First Degree Certificate after prosecuting studies in distance or correspondence method shall also be considered as eligible for admission in the Integrated Five Years course or three years' LL.B. Course, as the case may be.

Explanation.- The applicants who have obtained 10 +2 or graduation / post graduation through open Universities system directly without having any basic qualification for prosecuting such studies are not eligible for admission in the law courses.

6. Prohibition to register for two regular courses of study.-

No student shall be allowed to simultaneously register for a law degree program with any other graduate or postgraduate or certificate course run by the same or any other University or an Institute for academic or professional learning excepting in the integrated degree program of the same institution. Provided that any short period part time certificate course on language, computer science or computer application of an Institute or any course run by a Centre for Distance Learning of a University however, shall be excepted.

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 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 Years'

course or Degree course in any discipline for Three years' LL.B. course, for the purpose of applying for and getting admitted into a Law Degree Program of any recognized University in either of the streams. Provided that such a minimum qualifying marks shall not automatically entitle a person to get admission into an institution but only shall entitle the person concerned to fulfill other institutional criteria notified by the institution concerned or by the government concerned from time to time to apply for admission."

10. It is not in dispute that admission to the Law Courses conducted by the Tamil Nadu Dr. Ambedkar Law University are also governed by Rule 5 of the Legal Education Rules referred to above.

11. For admission to the Three Year Law Degree Course, a candidate -

(i) would have to be a graduate in any discipline from a university established by an Act of Parliament or by a State Legislature or an equivalent National Institution recognized as a deemed university, or a foreign university recognized as equivalent to an Indian University established by statute.

(ii) an LL.B Degree / Law Degree from such university and/or deemed university and/or equivalent institution should be recognized by the Bar Council of India for the purpose of enrolment.

(iii) the candidate should have graduated from such deemed university or equivalent institution by attending a regular course conducted by such university and/or deemed university and/or equivalent.

(iv) the candidate should not have obtained 10 +2 or graduation or post graduation through Open University System directly without having the basic qualification for prosecuting such studies.

12. The first proviso makes it absolutely clear that students, who have obtained +2 Higher Secondary Pass Certificate or First Degree Certificate after prosecuting studies through distance or correspondence method are also considered to be eligible for admission in the

Integrated Five Years Course or Three Years LL.B. Course, as the case might be. The first proviso, which is clarificatory only, clarifies that prosecution of studies in distance or by correspondence method is to be deemed to be on par with regular course conducted by a recognized Institution for the purpose of Secondary Pass Certificate or First Degree Certificate.

13. However, the Explanation after the proviso makes an exception in case of persons who have obtained 10 +2 or graduation/post graduation through Open University System directly without having any basic qualification for prosecuting such studies. Such persons are not eligible for admission.

14. Rule 5 of the Legal Education Rules does not exclude candidates who obtained the Secondary or Higher Secondary Course Certificate without attending a regular course in a recognized educational institution from admission to the Three Year LL.B Course.

15. For admission to the Integrated Degree Program, which is Five Year Law Course, an applicant should have successfully completed Senior Secondary School Course or equivalent from a recognized University of India or abroad or from a Senior Secondary Board or equivalent constituted or recognized by the Union or by a State Government or from any equivalent Institution from a foreign country recognized by the Government of that country for the purpose of issuing qualifying certificate on successful completion of the course. Thus, a candidate applying for the Integrated Degree Program (Five Year Course) should have obtained Higher Secondary Certificate or equivalent certificate from a recognized University and/or Board and/or equivalent after successful completion of a regular course.

16. On a perusal of Rule 5(a) and (b), it is patently clear that it was the intention of the Bar Council of India that for admission to the Three Year Law Course, a candidate should not only be a graduate, but a graduate upon completion of a regular course conducted by a university or an institution recognized by and/or affiliated to a university, or a deemed university or equivalent institution and in case of admission to the Integrated Degree Program, an applicant should have completed Senior Secondary School Course (+2) or equivalent such as 11 +1 or 'A' level in Senior School Leaving Certificate course from a Senior Secondary Board or equivalent constituted or recognized by the Union or

by a State Government on successful completion of the course and/or in other words, by attending a regular course. The intention is that immediately preceding qualifying certificate and/or degree should have been obtained on completion of a regular course.

17. On a perusal of Rule 5 of the Legal Education Rules, it is patently clear that students who prosecute studies privately or by distance or correspondence method are to be considered as eligible for admission to the Three Year LLB course, provided they possess the requisite Secondary School Leaving Course Certificate or Higher Secondary Course Certificate from a Board of Education recognized by the Union or by the State Government or from any equivalent institution of foreign country or any university established by statute or deemed university, and have graduated from a university and/or institution whose degree in law is recognized by the Bar Council, by completing a regular course.

18. However, applicants to the Law Course who obtained 10 +2 or graduation or post graduation through Open University System directly, without having the basic qualification for prosecuting such studies are not eligible for admission in the Law Courses. In other words, a graduate from an Open University who does not have the Secondary or alternatively Higher Secondary Course Certificate would not be eligible. Similarly, a post graduate from an Open University without a graduate degree would not be eligible for admission."

5.The learned counsel by relying upon the above judgment submitted that the petitioner is eligible to be considered for the 3 year L.L.B Degree Course, even though, he has completed 10th standard, 10+2 and the UG Degree Course through Distance Education. The learned counsel relied upon the proviso under Rule 5 of the Bar council of India Rules, to substantiate his submission.

6.The respondent has filed a counter affidavit in this case. The relevant portions in the counter affidavit is extracted hereunder:

5.I respectfully submit that the petitioner is an applicant for admission to the 3 year L.L.B Degree Course offered at the affiliated Law Colleges and that he has submitted his application through online and as per the details furnished, he belongs to MBC/DNC and secured 60.099% in his qualifying examination i.e B.C.A. Degree obtained through Distance Education at Tamil

University, Thanjavur. Based on his claim he was placed at 2658 in the General Ranking and at 713 in his Communal Ranking.

7.I respectfully submit that subsequently two candidates who were allotted admission have not joined the course. Therefore, those two seats were sought to be filled up from wait list candidates including the petitioner who was called for earlier counselling session held on 10.10.2019, was called for verification of documents on 23.10.2019.

10.I respectfully submit that the petitioner having appeared for the 10th examination without regular education, Higher Secondary as private candidate and subsequently qualifying degree through Distance Education is not eligible for allotment of seat. The judgment relied upon by the petitioner rendered by the Hon'ble Full Bench of this Hon'ble Court in W.P.No.31043 of 2017 is not applicable for the reason that petitioner has pursued the entire course of study as private candidate and through Distance Education mode, whereas, the petitioner's case before the Hon'ble Full Bench in W.P.No.31043 of 2017 is narrated at Paragraph No.3 of the Judgment is extracted hereunder:

3.It is the case of the petitioner that the petitioner passed 10th standard through regular school in 2012, after which, he discontinued the school education. The petitioner cleared the Higher Secondary Course Certificate Examination privately in 2014, after which, he attended three year graduation course in B.A.Islamic Studies and graduated in 2017 from B.S.Abdur Rahman University."

7.Mr.V.Vasanth Kumar, learned counsel appearing on behalf of the respondents submitted that the relief claimed by the petitioner has become infructuous and if this Court proceeds to decide this writ petition, it will be a wasteful academic exercise. The learned counsel submitted that the petitioner has completed 10th standard, 10+2 and UG through Distance Education without undergoing a regular course. The learned counsel submitted that such a candidate does not fulfil the minimum requirement, since at no stage the candidate has undergone the regular course. Therefore, the learned counsel submitted that the respondent was right in rejecting the candidature of the petitioner and it requires no interference.

8.A careful reading of Rule 5 of the Bar council of India Rules makes it very clear that an applicant must graduate

through a regular programme conducted by a University for the purpose of being considered for admission in the 3 year Law Course. If the Rule had stopped there, obviously the petitioner will not be eligible since he has not completed the minimum education through regular course. However the proviso, which should be considered as an exception to the main Rule, expands the eligibility. The proviso makes it clear that even the applicants who have obtained Higher Secondary or Under Graduation through Distance Education will also be eligible for admission for the 5 year course or the 3 year course, as the case may be. The explanation clearly states that the applicant should not have obtained 10+2 or UG or PG through Open University system directly without having any basic qualification. This would mean that a person who has not completed 10th cannot qualify for 10+2, a person who has not completed 10+2 cannot qualify for UG and a person who has not completed UG cannot qualify for PG. This is the literal meaning for the explanation appended to Rule 5 of Bar Council of India Rules. This Rule has been interpreted by the Full Bench and at Paragraph 17 and 18 of the judgement referred supra, the Full Bench has made it very clear that a person who has obtained the qualification even through distance/correspondence education is eligible to be considered for admission to the 3 year course.

9. This Court is able to understand the concern expressed by the learned counsel appearing for the respondent to the effect that a candidate who has right through undergone education through distance education in 10th Standard, 10+2 and UG and who has never undergone regular course at any point of time, is knocking the doors of this Court claiming himself to be eligible for being considered for the 3 year Law Course. However, the Rule viz., Rule 5 of the Bar Council of India Rules does not seem to match the concern expressed by the learned counsel for the respondent. The Rule itself provides for an exception to undergo education through distance/correspondence mode. Till this Rule is in force, a candidate who satisfies the requirements of this rule will have to be considered for admission to the course.

10. The Bar Council of India can take a cue from this judgment and make necessary changes in Rule 5 to ensure that the candidates who complete their Higher Secondary and UG through regular course alone are made eligible to participate for selection in the 5 year course or 3 year course, as the case may be. In the absence of the same, persons who have not even gone to the regular school or college will get in to a law college for the first time in their life and that may not be a healthy trend to maintain the quality of education in Law. The Bar Council of India should seriously take this suggestion into consideration and make necessary changes to the Rule.

11. In view of the above discussion, it is clear that as per the existing Rules, the petitioner is eligible for being considered as a candidate for the 3 year B.L Course subject to the condition that the petitioner again participates in the selection for the academic year 2020-2021 and obtains necessary cut off marks. In other words, the ground that has been put against the petitioner during the previous academic year 2019-2020 should not be again put against the petitioner, if the petitioner satisfies all the other requirements after participating in the selection afresh for the academic year 2020-2021.

12. This writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are also closed. The Registry is directed to mark a copy of this order to the Bar Council of India, New Delhi and also to the Bar Council of Tamil Nadu and Puducherry.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Registrar cum Chairman,
The Tamil Nadu Dr.Ambedkar Law University,
3 Year L.L.B. Admissions, 2019-2020,
Poompozhi, No.5, Dr.D.G.S. Dhinakaran Salai,
Chennai 28.
2. The Government Pleader,
High Court, Madras.
3. The Bar Council of India,
New Delhi.
4. The Bar Council of India,
Tamil Nadu and Puducherry

+1cc to Mr.R.Jayaprakash, Advocate in Sr.27349

W.P.No.31161 of 2019 and
W.M.P.Nos.4906 and 31287 of 2019

SVI (CO)
RV(17/09/2020)