

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

WRIT PETITION NO.7959 OF 2021

Aarti Harish Bhandari
Age:37 years,
Flat no.E-102, Golden Nest Phase 1(Old),
Sonam Bharati Co-operative Housing
Society Ltd., Bhayander (East),
District – Thane, Pin Code – 401 105.

...Petitioner

Versus

1. Shree L.R Tiwari College of Law
Through its Principal,
Having address at –
Shree L.R Tiwari College of Law,
Mira Road (East),
District – Thane, Pin Code – 401 107.
2. University of Mumbai,
Through Department of Law,
Kalina Campus, Santacruz East,
Mumbai – 400 098.
3. Deleted (Amendment carried out
pursuant to order dated 25th November 2021) ...Respondents

Mr. Sandesh D. Patil a/w Mr. Chintan Y. Shah i/b Mr. Prithviraj S. Gole,
for the Petitioner.

Ms. Manorama Mohanty a/w Mr. Mittal B. Nor i/b S.K. Srivastav & Co.,
for Respondent No.1.

Mr. Girish Paryani a/w Mr. Vaibhav Kamble for Respondent No.2 -
University.

***CORAM: R. D. DHANUKA AND
ABHAY AHUJA, JJ.***

DATE : 25th NOVEMBER 2021

ORAL JUDGMENT (Per R. D. DHANUKA, J.) :

1. Heard.
2. Liberty is granted to delete the name of respondent No.3 from the cause-title of the petition. Leave granted. Amendment to be carried out forthwith. Re-verification is dispensed with.
3. Rule. Ms. Mohanty waives service on behalf of respondent No.1. Mr. Paryani waives service on behalf of respondent No.2.
4. By consent of the parties, this petition is heard finally.
5. By this petition filed under Article 226 of the Constitution of India, the petitioner is seeking an order and direction against the respondent Nos. 1 and 2 to forthwith permit the petitioner to appear for 5th and 6th semester examination (three year course conducted by the respondent No.2 – University. It is the case of the petitioner that the petitioner passed Common Entrance Test (for short 'CET') for LL.B Course to be conducted

by the respondent No.2 – University on 6th December 2019 and secured admission with respondent No.1 and passed 4 semesters out of 6 semesters. The petitioner paid the fees for third year of the LL.B Course on 22nd July 2021. In the Student Eligibility Status Report of the respondent No.1, however the name of the petitioner was shown at serial No.3 as ‘Not Eligible (Less percentage as per O.5078)’, as per Rule O.5078 of the statute. The said Rule O.5078 reads as under:-

“O.5078 For admission to the First Semester of 3 years LL.B. or 5 years LL.B Course of the candidates securing more than 40% but less than 45% of marks at the respective qualifying examinations (with further 5% relaxation for the candidates belonging to SC/ST categories) the University may conduct Common Eligibility Examination. The Common Eligibility Examination may be conducted either through University Department of Law or through any of the assenting Law Colleges affiliated to the University of Mumbai on behalf of the University of Mumbai as shall be recommended by the Board of Studies in Law. The candidates passing in such examinations shall become eligible for admission to the respective Law Courses and may be admitted in any of the Law Colleges conducting the respective Courses, subject to the availability of the admissions / seats in the College for the course and the Class.”

6. Mr. Patil, learned counsel for the petitioner invited our attention to various mark-sheets annexed to the petition, from page nos.21 to 24 and would submit that the petitioner was granted admission to the respondent No.1 – College after appearing for CET and has already completed 4 semesters. The respondent No.2 therefore could not declare

the petitioner as ineligible by applying clause O.5078 of the statute at this stage. Our attention is invited to the letter dated 18th November 2020 from the University of Mumbai to the respondent No.1 – College, informing that the petitioner was declared Not Eligible (Less Percentage as per O.5078). It is the case of the petitioner that no such communication was served upon the petitioner by the University or the College. Only when the petitioner visited the respondent No.1- College recently, the petitioner came across the said document annexed at Exhibit – ‘F’ to the petition stating that the petitioner was declared ineligible by the University.

7. It is submitted by the learned counsel for the petitioner that since the petitioner was already granted admission pursuant to the petitioner clearing the CET examination and has already completed 4 semesters out of 6 semesters and the respondent No.1 - College has already accepted the fees for the third year of the LL.B Course, the petitioner cannot be denied permission to appear for the 5th semester and 6th semester examination.

8. Mr. Patil, learned counsel for the petitioner placed reliance on the order passed by this Court on 23rd November 2021 in the case of ***Qureshi Alsaba Zabir v/s The State of Maharashtra and Others in Writ***

Petition No.2352 of 2021 granting reliefs to the students in identical facts holding that due to the negligence of the College and University the petitioner was already granted admission and had completed 4 semesters out of 6 semesters could not have been denied permission to appear for the 5th semester and 6th semester examination. In our view, the facts of this case are identical to the facts before this Court in the case of ***Qureshi Alsaba Zabir (supra)*** and applies to the facts of this case.

9. In our view since the petitioner was already allowed to appear for the CET examination and after passing the said examination was granted admission by the respondent No.1 – College, the University after lapse of substantial period and that also more particularly, the petitioner having passed 4 semesters out of 6 semesters could not have declared the petitioner ineligible by placing reliance on clause O.5078. The petitioner is not at fault because of the non-communication on the part of the University or the College about such order passed by the University belatedly or by not considering the issue of eligibility at the threshold.

10. We, accordingly, pass the following order:-

ORDER

- (i) Rule is made absolute in terms of prayer clauses ‘a’ and ‘b’;

(ii) Respondent No.2 – University is directed to declare the petitioner as eligible to appear for 5th and 6th semester examination (three year course conducted by the respondent No.2 – University, within 48 hours from today;

(iii) We, hereby, direct the respondent No.1 – College to permit the petitioner to appear for her 5th semester examination forthwith;

(iv) It is made clear that after completing the 5th and 6th semester successfully by the petitioner, the respondent No.2 – University, shall grant degree in favour of the petitioner for LLB (3 years Course);

(v) Respondent No.2 – University is directed to issue Hall-Ticket through the respondent No.1 – College in favour of the petitioner by Monday 29th November 2021 upto 5:00 p.m., without fail, to enable the petitioner to appear for the 5th semester examination commencing from 1st December 2021;

(vi) It is made clear that we have passed this order in the peculiar facts and circumstances of this case and this order shall not be treated as a precedent in any matter.

11. Before parting with this judgment, we direct the respondent No.1 - College to bring to the notice of all the applicants at the stage of seeking admission, about the eligibility criteria which are mandatory or

discretionary, and that if the students would not comply with the eligibility criteria, no admission would be granted in any circumstances.

12. The respondent No.1 - College shall apply for the eligibility of the students to the eligibility certificate from University within four weeks from the date of granting provisional admission.

13. It is made clear that if the respondent No.1 - College applies for any order from the University regarding eligibility certificate in respect of such students who are granted provisional admission, the University shall deal with such application expeditiously well in advance before the commencement of the examination.

14. Parties to act on the authenticated copy of this judgment.

[ABHAY AHUJA, J.]

[R. D. DHANUKA, J.]