

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3019 OF 2021

Azim Pashalal Kani

...Petitioner

Versus

Bar Council of India & Ors.

...Respondents

Mr. Chetan G. Patil a/w Mr. Mandar G. Bagkar for the Petitioner.

Mr. Amit D. Sale for the Respondent No. 1.

Mr. Makarand Bakore for the Respondent No. 2.

Mr. Abhijeet Adgule for the Respondent No.3.

**CORAM : R.D. DHANUKA &
R.I. CHAGLA, JJ.**

DATE : 17 August 2021

ORDER :

1. Rule.

2. Learned Counsel for Respondent No. 1 waives service.

3. By consent of parties, the Petition is heard finally.

4. By this Petition filed under Article 226 of the Constitution of India, the Petitioner seeks order and direction against the Respondent Nos. 1 and 2 for quashing and setting aside the communication dated 14th January 2019 and a direction against Respondent Nos. 1 and 2 to forthwith process the Enrollment Application preferred by the Petitioner and enroll him as an Advocate at the earliest.

5. The Petitioner appeared for the Higher Secondary Certificate Examination in the year 2013 and has secured 44.67% marks. The Petitioner thereafter, secured admission in the Respondent No. 3-College of law in the Shivaji University, Kolhapur and passed Degree of Bachelor of Social Laws in the month of October 2016 and obtained Degree of Bachelor of Laws (Five Years) in the month of March 2018. The Petitioner thereafter, applied for enrollment as an Advocate under the Advocates Act, 1961 with the Bar Council of Maharashtra & Goa.

6. On 25th September 2018 the Bar Council of Maharashtra & Goa informed the Bar Council of India that the Petitioner belonged to open category and had secured 44.67%

marks in the Higher Secondary Certificate examination. According to the Bar Council of Maharashtra & Goa, as per the Legal Education Rules of Bar Council of India, the candidate from open category should possess minimum 45%. It was stated that the Committee of the Bar Council of Maharashtra & Goa, in view of the subject being related to Legal Education Rules of Bar Council of India, it shall be referred to the Bar Council of India.

7. The Bar Council of India vide letter dated 14th January 2019 to the Petitioner adverted to Rule 7 of the Legal Education Rules 2008 and rejected the Application for Enrollment made by the Petitioner on the ground that the Petitioner had secured less than 45% marks in the Higher Secondary Certificate Examination. Being aggrieved by the said decision, the Petitioner filed this Petition.

8. Mr. Patil, learned Counsel for the Petitioner invited our attention to the certificates issued by the Maharashtra State Board and Higher Secondary Education, degree conferred by the Shivaji University, Kolhapur in the month of October 2016 for Bachelor of Social Laws and for the examination held

in March 2018 in Bachelor of Laws (Five Years). It is submitted by the learned Counsel that the Bar Council of India has rejected the application for enrollment of the Petitioner by relying upon Rule 7 of the Legal Education Rules 2008. Though the said Rule 7 empowers the Bar Council of India to stipulate minimum percentage of marks not below 45% of the total marks in case of general category applicants, no circular was issued by the Bar Council of India, by exercising said powers. Bar Council of India has refused to grant enrollment without issuing any circular clarifying that minimum percentage of marks below 45% in the Higher Secondary Certificate Examination would not be accepted while granting admission in the five years course of LL.B.

9. It is submitted by the learned Counsel for the Petitioner that the Petitioner who was granted admission to the five years course by the Respondent No. 3-College affiliated to Shivaji University, Kolhapur has been already granted Degree of Bachelor of Laws in the said five years course in the month of March 2018. He invited our attention to the Circular dated 27th August 1998 issued by the Bar Council of India addressed to the Principal of N.S. Law College, Sangli stating that the Bar

Council of India has opined that 0.5% or above can be rounded off to make it 1% to enable a student to qualify for education.

10. Learned Counsel placed reliance on the judgment of the Supreme Court in case of **Poonam Rani Sharma Vs. University of Bikaner & Ors.**¹ in support of the submission that rounding of the marks in graduation is permissible. He also relied upon the judgment of this Court in case of **Syeda Afiya Ahmad Vs. Rashtrasant Tukadoji Maharaj Nagpur University & Ors.**² in support of submissions that once the Petitioner was granted admission in the law college by accepting the marks obtained by the Petitioner below 45% and was conferred degree in law, enrollment by the Bar Council of India cannot be refused on the ground that the Petitioner has secured less than 45% marks.

11. Mr. Sale, learned Counsel for the Bar Council of India strongly placed reliance on Rule 7 of the Legal Education Rules 2008 and submitted that under the said Rule it was clearly provided that Bar Council of India is empowered

1 Writ Petition No. 7470 of 2010 Order dated 13.07.2011

2 2013(1) Mh.L.J. 185

to stipulate minimum percentage of marks not below 45% of the total marks in general category applicants for the qualifying examination such as plus two examinations in place 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 subject to proviso inserted therein. He further states that Bar Council of India informed by all the Universities and all the Colleges that the direction to comply with mandatory requirement of Rule 7 of the Legal Education Rules 2008. He submits that in view of such circular already issued by the Bar Council of India, the Respondent No. 3-College at the first instance has not granted admission.

12. Learned Counsel for Respondent No. 3 states that no such circular referred by the learned Counsel for Bar Council of India was received by Respondent No. 3 at any point of time prior to date of appointment to the Petitioner. Statement is accepted. His client also did not receive any other communication from the Bar Council of India conveying that no fraction in marks can be rounded off to one for considering

the 45% marks.

13. It is not in dispute that the Petitioner had secured 44.67% marks in Higher Secondary Certificate Examination held in the month of May 2013. The Petitioner was issued such certificate by the Maharashtra State Board of Secondary and Higher Secondary Education dated 30th May 2013.

14. The Petitioner was granted admission by the Respondent No. 3-College in the five year's course in the open category in the year 2013. The Petitioner completed his studies in the five years LL.B. course in the year 2018 and was conferred with the Degree of Bachelor of Laws (five years) in the month of March 2018. The Bar Council of India has refused to enroll the Petitioner vide letter dated 14th January 2019 on the ground that the Petitioner having secured 44.67% marks could not be treated as 45% since the Legal Education Committee in the meeting held on 12th September 2018 had refused to round off 44.50% marks to 45%.

15. Though the learned Counsel appearing for the Bar Council of India made a statement that the Bar Council of India had issued a circular under Rule 7 of the said Legal Education Rules, 2008 informing the University and the Law Colleges not to grant admission to the students having secured less than 45% marks, no such circular has been produced before this Court. Learned Counsel for the Respondent No. 3-College on instructions made statement that no such circular from Bar Council of India had been received not to grant admission to the students who had secured less than 45% marks.

16. Though the Bar Council of India has referred to a decision alleged to have been taken in the Legal Education Committee in its letter dated 12th September 2018 refusing to round off 44.5% marks to 45%, neither such decision came to be produced before this Court nor any proof of communication of the decision to any of the colleges. We accept the statement of the learned Counsel for the Respondent No. 3 that neither copy of such decision nor copy of the circular having been received by the Respondent No. 3, at any time prior to the admission of the Petitioner to five year LL.B course in the Respondent No. 3-

College.

17. A Division Bench of this Court in case of **Syeda Aufiya Ahmad** (supra) has held that the Petitioners therein having completed substantial part of their course, admission could not be cancelled at the fag end on the ground of not completing the eligibility criteria of admission in terms of Ordinance 16 of 2009. In that matter, the Petitioner was admitted to MCA course in a college, possessing post graduate diploma in Computer Science and Applications, though not securing 50% at graduate level. This Court after adverting to large number of judgments of Supreme Court and this Court held that the Petitioner having secured admission after verifying the Petitioner's eligibility, it was the bounden duty of the University to verify the question of eligibility of the Petitioner at the very threshold. It is not as if the Petitioners have withheld material documents regarding their eligibility. On account of misdeed or negligence on the part of the respondent College or University, the Petitioners, who have undergone substantial part of their course, cannot be penalised at the fag end of their course. In our view, the facts before this Court in the said judgment apply to the facts of this case. It is

not the case of the Respondent No. 3 that the Petitioner has suppressed that the Petitioner had secured less than 45% marks in Higher Secondary Certificate Examination. No such objection about eligibility of the Petitioner to get admission was raised by the Respondent no. 3-College or by the Shivaji University, Kolhapur at any point of time before completion of the entire course of the said five years by the Petitioner. The said objection regarding the eligibility of the Petitioner has been raised for the first time by the Bar Council of India after more than a year of the Petitioner having conferred with the five years LL.B course degree. In our view, on this ground also the Bar Council of India could not have refused the enrollment of the Petitioner as an advocate.

18. A perusal of the communication dated 27th August 1998 issued by the Bar Council of India to one of the Colleges would clearly indicate that 0.5% or above could be rounded off to make it 1% to enable a student to qualify for education. No contrary decision of the Bar Council of India has been brought to our notice or was communicated to the Respondent No. 3-College before admitting the Petitioner to the said five years course about seven years back. The Petitioner

who seeks enrollment as an Advocate has been deprived of his right to practice as an advocate after possessing requisite qualification by the Bar Council of India under Article 19(1)(g) of the Constitution of India. The impugned decision taken by the Bar Council of India thus, deserves to be quashed and set aside.

19. We pass the following order:-

- (i) Impugned communication dated 14th January 2019 issued by the Bar Council of India is quashed and set aside.
- (ii) Respondent Nos. 1 and 2 are directed to process the Enrollment Application filed by the Petitioner and to enroll the Petitioner as an Advocate within a period of four weeks from today.
- (iii) We direct the Bar Council of India to inform all the Universities and all the Law Colleges about the circular, if any, issued by the Bar Council of India

qualifying the admission criteria under Rule 7 of the Legal Education Rules 2008 within a period of eight weeks from today.

(iv) Writ Petition is disposed of in the aforesaid terms.

(v) Rule is made absolute accordingly.

(vi) Parties to act upon authenticated copy of this order.

[R.I. CHAGLA J.]

[R.D. DHANUKA, J.]