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

WRIT PETITION NO. 13557 OF 2022

Balu Kishan Mutke

... Petitioner

Vs.

The University of Mumbai through
its Vice Chancellor and Ors

... Respondents

Mr Vinod P. Sangvikar, Advocate for the Petitioner

Mr Ashutosh M. Kulkarni, a/w Gaurav Sharma, for Respondent Nos.
1 and 2.

Mr Abhijit D. Kalke, i/b Dr Prakash K. Deshmukh, Advocate for Re-
spondent No.3.

**CORAM : NITIN JAMDAR AND
GAURI GODSE, JJ.**

DATE : 28 NOVEMBER 2022

P.C.:

Not on board. Taken on production board by way of praecipe.

2. By this Petition, Petitioner is seeking to quash and set aside the letter dated 19 July 2022 and for the further direction to the Respondents to allow the Petitioner to appear for third Year LLB Examination, i.e., Semesters 5 and 6.

3. Petitioner is around 50 years old Tax Consultant. The Petitioner has been denied permission to appear for the examination which is scheduled tomorrow i.e., 29 November 2022, on the ground that the Petitioner does not possess minimum 45% aggregate in general(open)

category as per CET Rules LLB 2020-21. The fact that minimum 45% aggregate are required as basic eligibility criteria is known and well established as having been issued under the CET Rules. The Petitioner at the time of submitting form to the State Common Entrance Test Cell stated that he is fully aware of the eligibility criteria and asserted that he possess the eligibility. It is not conceived by that the Petitioner is unaware of the basic criteria and the fact that the admission was without basic criteria and that such admission without basic qualification is not legal.

4. The learned Counsel for the Respondent Nos. 1 and 2 has point out that even though the Petitioner was given admission by Respondent No.3 College in the year 2020, it is only upon the University reminding the college on 23 March 2022 that papers have been sent in respect of the students by the said college which upon scrutiny of University dated 19 July 2022, the college was informed that as per the minimum criteria, Petitioner is not eligible.

5. Once the Petitioner does not possess basic qualification and that he had given declaration that he has understood that he is aware of the basic qualification and also further given declaration that he possesses the same, on the ground of delay on the part of the college and forwarding paper for scrutiny, no right would arise on the Petitioner. At the most Petitioner would have remedy of seeking damages against Respondent No.3 College.

6. It is not possible for us to issue a Writ of Mandamus to direct the University to continue and permit the Petitioner to sit for examination even though the Petitioner does not possess the minimum qualifying marks. This would be unfair to several students may not apply in view of specific rules prescribing minimum 45 % marks. Such directions would also be against the desirability of maintaining standard in education.

7. As regards order passed by the Division Bench of this Court in the case of *Aarti Harish Bhandari v Shree L.r Tiwari College of Law though its Principal and Ors*¹ on which the Petitioner has relied upon, the Division Bench had on equity, where the Petitioner was on the verge of completing his course, was declared eligible. The Division Bench had also made it clear that the Order was passed in peculiar facts and circumstances of the case and this order shall not be treated as a precedent in any matter. Learned counsel sought to further rely upon decision of the Hon'ble Supreme Court in the case of *Chowdhury Navin Hemabhai v State of Gujarat*,² where the Hon'ble Supreme Court had found that was a fault of the rule-making authority in framing rules and the appellants had proceeded based on the rules and in that context the Hon'ble Supreme Court had granted directions under Article 142 of the Constitution of India. The Hon'ble Supreme Court in the Judgment observed clearly that these directions shall not be treated as a precedent.

1 LQ/BomHC/2021/2300

2 2011 (3) KCCRSN 180

8. Under this circumstances, what sought for by the Petitioner as regard the direction cannot be issued.
9. It is open to the Respondent University to initiate action against Respondent No.3- College for bringing about this position.
10. Writ Petition is accordingly rejected.

(GAURI GODSE, J.)

(NITIN JAMDAR, J.)