

17.04.2023
Item No. 3
Ct. No.1
PG/KS

W.PA.(P) 152 of 2023

Sk. Rafizul
Vs.
The State of West Bengal & Ors.

Mr. Kiron Sk.
Mr. Sayantan Adhya.....for the petitioner

Mr. Avinash Kankani
.....for the Bar Council of India

Mr. N.C. Bihani
Mr. Soumyajit Ghosh
.....for the Burdwan University

1. By this writ petition styled as a public interest litigation, the writ petitioner seeks to pursue the 3 year law course in the Burdwan University and prays for issuance of a writ of mandamus to direct the respondent no. 3 to conduct entrance examination for admission in the course.

2. Elaborate submissions were made by the learned advocate appearing for the writ petitioner in respect of his contention that conduct of an entrance examination is a transparent method of selection of candidates and the University ought not to have conducted the selection only by adopting the marks secured by the candidates in the 3 year degree course. It is submitted that up to the academic session 2019-

20, the Burdwan University had been conducting the entrance examination for selection of candidates to the 3 year law course but on account of the COVID pandemic, for two academic sessions i.e. from 2020-2021 and 2021-2022 entrance examination was not conducted and therefore, the petitioner seeks a direction upon the respondents/University to conduct an entrance examination for selection to the 3 year LL.B. (Honours) course for the academic session 2023-2024.

3. The learned advocate appearing for the University would point out that by notification dated 16th March, 2023, applications were called for admission to the 3 year LL.B. (Honours) course in the academic session 2023-2025 and the last date for application was 31st March, 2023 and as on the said date more than 2000 applications have been received and the writ petitioner is also one of the applicants for the said course.

4. Further, it is submitted that the notification issued for the academic session 2020—2023 and 2023-2025 is strictly in accordance with the rules framed by the Bar Council of India viz. The Rules of Legal Education, 2008 (for brevity the ‘said Rules’) and in this regard, the learned advocate has drawn our attention to rule 5 and rule 7 of the said Rules.

Further, it is submitted that identical issue was raised before this Court in W.P.A.(P) 325 of 2022 etc. in respect of the notification issued by the University of Calcutta inviting applications for admission to the 5 year B.A. LL.B. course for the academic sessions 2022-23 and the Hon'ble Division Bench by order dated 22nd August, 2022 after considering similar submissions as made by the writ petitioner before this Court had dismissed the writ petitions.

5. After we have elaborately heard the learned advocates for the parties, we need to observe that under rule 7 of the said rules there is a proviso, which states that provided that such minimum qualifying marks shall not automatically entitle a person to get admission into an institution but only shall entitle the person concerned to fulfil other institutional criteria notified by the institution concerned or by the Government concerned from time to time to apply for admission.

6. The respondents/University should bear in mind the importance for inserting the proviso in rule 7. Since the selection of candidates for the 3 year LL.B. (Honours) course should be broad based, the rule framing authorities thought it fit to include the proviso. Therefore, the respondents/University cannot make the proviso redundant by adopting the procedure under rule 7 of the said Rules without reference to proviso. If

an entrance examination is conducted, the selection will not only be more broad based but it will also ensure that the candidates with the right aptitude are selected to the said professional course. In any event, we are unable to grant any relief to the writ petitioner for the current academic session for the following reasons.

7. Firstly, that the notification was issued on 16th March, 2023 and the last date for filing the applications is 31st March, 2023 which is already over and more than 2000 applicants have filed their applications and the list has already been prepared by the respondents/University. Therefore, at this juncture, the admission process cannot be interdicted. The next reason being that the writ petitioner himself has applied for the said course and this fact has not been disclosed in the writ petition. Therefore, we are not inclined to grant any relief to the writ petitioner, as sought for with regard to the admission in 3 year LL.B. (Honours) course of studies for the academic session 2023-2025.

8. As admitted by the respondents/University that prior to the academic session 2020-2021, the respondents/University had been selecting candidates by conducting entrance examination and the marks obtained in the graduation was taken into consideration for deciding the eligibility of the

candidates to apply for the 3 year LL.B. (Honours) course, which was conducted by the University.

9. The only reason given before us for suspending the conduct of the entrance examination is on account of the COVID pandemic. Therefore, the respondents/University, should definitely revert back to the original procedure and conduct entrance examination for admission to the 3 year LL.B. (Honours) course as well as for the 5 year B.A. LL.B. course from the academic sessions 2024-2026. The learned advocate appearing for the respondents/University on instruction would submit that the respondents/University will revert back to the old procedure and will conduct the entrance examination before finalizing the examination to the 3 year LL.B. (Honours) course and the 5 year B.A. LL.B. Course for the academic session commencing from 2024. This undertaking given by the respondents/University is placed on record.

10. The learned advocate appearing for the writ petitioner after having heard us dictate the above order, would submit that the issue does not relate to the University of Burdwan but other universities as well. The writ petitioner has sought for a direction against the University of Burdwan and that is how the writ petition had been drafted and filed. More importantly, the writ petitioner has suppressed the

fact that he had applied for selection pursuant to the notification dated 16th March, 2023. Therefore, we could have outrightly dismissed the writ petition at the very threshold. However, we did not do so considering the important issue flagged by the writ petitioner with regard to how the selection should be made by the University of Burdwan. Therefore, at this juncture, we cannot permit the writ petitioner to expand the scope of the present writ petition.

11. With the above observation, the writ petition stands disposed of.

12. There shall be no order as to costs.

13. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)