

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

PRACHI
PRANESH
NANDIWADEKAR

Digitally signed by
PRACHI
PRANESH
NANDIWADEKAR
Date: 2024.01.08
11:34:34 +0530

WRIT PETITION NO.3957 OF 2022

Vinayak Uttam Hirave	)	
Age 38 years, occ. Service	)	
R/at. 75, Old Post Wakadi Chawl,	)	
Room No.45, 1 st Floor,	)	
Opp. BMC Garden, New Prabhadevi,	)	
Mumbai – 400 025.	)	.. Petitioner

Versus

1. Ideal College of Law	)	
Through its Principal,	)	
Having address at Posheri, Tal. Wada,	)	
District-Palghar – 421 303.	)	
2. University of Mumbai	)	
Through Department of Law,	)	
Kalina Campus, Santacruz (East),	)	
Mumbai - 400 098.	)	.. Respondents

Mr.Prithviraj S. Gole for the petitioner.
Mr.Asadullah Shaikh i/by Jus Consultus for respondent no.1.
Mr.Manish Kelkar for respondent no.2-University of Mumbai.

**CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.
DATE : 3rd January 2024**

Judgment (Per Jitendra Jain, J.) :-

. Rule. Mr.Shaikh, learned counsel waives service for respondent no.1 and Mr.Kelkar, learned counsel waives service for respondent no.2-University. By consent of parties, the petition is heard finally.

2. By this petition under Article 226 of the Constitution of India, the petitioner has sought appropriate writ directing the respondents to permit the petitioner to admit and appear for 6th semester examination of the said course.

3. Briefly, the facts are as under :-

(i) In June, 2019, the petitioner appeared for Maharashtra State Common Entrance Test (CET) for the course of 3 year LL.B. and cleared the CET. Respondent no.2 allotted admission to the petitioner in respondent no.1 college. The petitioner along with his application for CET and thereafter for admission to the allotted college, furnished all the documents including the mark sheet of 1st, 2nd and 3rd year of B.Com. exam. It was thereafter that the respondents admitted him to 3 year LL.B. course for the academic year 2019-20. The petitioner was allotted the college in OBC category.

(ii) The petitioner appeared in the first four semesters of the said course and cleared the exam with good marks. The petitioner also appeared for 5th semester examination held in December 2021. However, upon enquiry about the result of 5th semester and at the time of admission to 6th semester, he was informed by respondent no.1 that they have received communication from respondent no.2 that the petitioner

was at the first instance not eligible for enrolling to LL.B. course since the average marks of 3 years integrated course of B.Com. was only 40.63%, which was less than the required percentage of 42% for OBC students. It is this action of the respondents which is challenged in the present petition.

4. The petitioner submits that he had given all the certificates which indicated the marks obtained by him at B.Com. level to the respondent nos.1 and 2. The respondents having allotted the seat in the college and the petitioner having completed 5 semesters out of 6 semesters, they were not justified in prohibiting the petitioner from completing the course on this ground. The petitioner further contended that the respondents were aware of the marks obtained by the petitioner and at the fag end of the course, such an action of the respondents is unfair and unreasonable. Respondent no.1 college had forwarded all the mark sheets and documents to respondent no.2 university in the year 2019 itself and it is only after more than 2 years, the university raised an objection about the eligibility of the petitioner. The petitioner submits that in an identical situation, the Co-ordinate Bench of this Court in the case of *Aarti Harish Bhandari Vs. Shree L.R. Tiwari College of Law*¹ allowed the law student to complete the course. The petitioner also

1 Writ Petition No.7959 of 2021 decided on 25th November 2021

relied upon two more decisions i.e. (i) in the case of ***Qureshi Alsaba Zabir Vs. State of Maharashtra & Ors.***² and (ii) in the case of ***Azim Pashalal Kani Vs. Bar Council of India & Ors.***³ in support of his submissions. The petitioner, therefore, prayed that he be allowed to complete his law course.

5. Per contra, respondent no.1-college submits that in the admission form in the academic category details, the petitioner stated that he has obtained 48.17% marks against the Senior Secondary row in the year 2012 whereas the average marks obtained in all the three years of B.Com. was 40.63% as per the conversion certificate. Respondent no.1, however, did not dispute that seat was allotted based on the recommendations by respondent no.2 and subsequently the petitioner has completed 5 semesters out of 6 semesters.

6. Insofar as respondent no.2-University is concerned, they would contend that since the petitioner has not obtained minimum 42% marks at B.Com. level, they were justified in invoking Ordinance O.5078. However, respondent no.2 did not dispute that they had not taken action for more than 2 years inspite of being aware about the marks obtained based on the mark sheets and the documents furnished to them by the

2 Writ Petition No.2352 of 2021 decided on 23rd November 2021

3 Writ Petition No.3019 of 2021 decided on 17th August 2021

petitioner through respondent no.1. Respondent no.2 has relied on ordinance O.5078 to declare the petitioner ineligible.

7. We have heard learned counsel for the petitioner and the respondents and with their assistance perused the pleadings and reply affidavits.

8. There is no dispute that the petitioner has completed 5 semesters out of 6 semesters of LL.B. course. The petitioner has cleared the first 4 semesters with good marks and result of 5th semester is withheld by the respondents. The admission was granted in the year mid 2019 for the academic session 2019-20, however, no such objection as to his eligibility was taken till he appeared for his 5th semester exam and was about to take admission in the 6th semester. There is no explanation by respondent no.2 as to why at the fag end of the course, after more than 2 years, they have taken an objection to the eligibility of the petitioner. The admission process was completed by respondents in mid 2019 and therefore, reason given by respondent no.2-university for delay by taking shield of pandemic is misconceived because pandemic started in March 2020. Respondent no.2 ought to have objected at the threshold itself and ought not to have allotted the seat. However, after allotting the seat and the petitioner having completed 5 out of 6 semesters, at

the far end of the course cannot take this objection. In the admission form filed by the petitioner with respondent no.1 college, in the academic category details, he has stated that he has obtained 48.17% marks which were the marks obtained in final year of B.Com. examination. The admission form did not specify that the average of 3 years of B.Com. should be stated. Therefore, one cannot attribute any mis-declaration to the petitioner more so, when the mark-sheets of all the 3 years of B.Com. course were furnished to the respondents which clearly evidenced the marks obtained by him in all three years. There is no mis-declaration or concealment by the petitioner on this count. The Circular dated 10th June 2019 by respondent no.2 stating process to be followed by colleges for determining eligibility states that it is only after verification of mark-sheets by both the respondents that the admission will be confirmed. Therefore, once having confirmed the admission by the respondents, they cannot attribute any mis-declaration to the petitioner.

9. The Ordinance O.5078 states that the University may conduct Common Eligibility Examination for candidates who have secured more than 40% but less than 45% marks at the respective qualifying examinations and the candidates passing such eligibility exam would become eligible for admission to law courses. There is no dispute

that the average marks of 3 years of B.Com. obtained by the petitioner is 40.63% and there is also no dispute that the petitioner has cleared common eligibility exam. The Ordinance O.5077 supports the petitioner and is in consonance with O.5078 when it states that if there is an eligibility test then qualifying marks should be 40% in case of 3 year LL.B. course. The contention of respondent no.2 that broucher states average marks of B.Com. Exam is not the basis of communication whereby the petitioner's eligibility is questioned and therefore, same cannot be raised before this Court and in any case that would be relevant if eligibility was questioned before allotment and granting admission and not at the fag end of the completion of the course. Therefore, invocation of Ordinance O.5078 by respondent no.2 to declare the petitioner ineligible is not correct.

10. In our view, the petitioner is justified in placing reliance on the decision of this Court in case of ***Aarti Harish Bhandari Vs. Shree L.R. Tiwari College of Law (supra)*** wherein on a very similar situation, this Court directed the University to declare the petitioner therein as eligible to appear in the 5th and 6th semester examinations and permitted the petitioner to complete the course. The petitioner is also justified in placing reliance on the decision of this Court in case of ***Azim Pashalal***

Kani Vs. Bar Council of India & Ors. (supra). Thus the impugned decision taken by the respondents deserves to be quashed and set aside.

11. We pass the following order :-

- (i) The respondents are directed to declare the result of the petitioner of 5th semester exam held in December 2021.
- (ii) The respondents are further directed to permit the petitioner to take admission in the 6th semester and allow the petitioner to complete his course.
- (iii) It is made clear that we have passed this order in the peculiar facts and circumstances of the case.

12. Petition is allowed in the aforesaid terms. No order as to costs. Parties to act on the authenticated copy of this order.

JITENDRA JAIN, J.

A. S. CHANDURKAR, J.