

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW APPLICATION (RPW) NO.80 OF 2024
IN
WRIT PETITION NO.13061 OF 2022

Mr. Abhijit Bhagwat Khedkar,
Age 29 years, Occupation : Student & Business,
Residing at : 24B, Sadguru Park, Avahlwadi,
Wagholi, Pune – 412207.

...Applicant

Versus

1. State of Maharashtra,
(Summons to be served on the
Learned Government Pleader
appearing for State of Maharashtra
under Order XXVII, Rule 4 of the
Code of Civil Procedure, 1908)
2. The Registrar,
Deccan College, Post Graduate and
Research Institute Deemed to be
University Yerwada, Pune – 411 006.
3. The Vice – Chancellor,
Deccan College, Post Graduate and
Research Institute Deemed to be
University Yerwada, Pune – 411 006.
4. The Controller of Examination,
Deccan College, Post Graduate and
Research Institute Deemed to be
University Yerwada, Pune – 411 006.
5. Director of Higher Education,
Central Building, Near Sasoon
Hospital, Pune – 411 001.
6. The Joint Director of Higher Education,
Pune Region, 17, Dr. Ambedkar Road,
Pune Division, Pune – 411 001.

...Respondents

Mr. Abhijeet V. Jangale for Review Applicant.

Mr. N. C. Walimbe, Addl. G. P. for Respondent No.1-State.

Mr. J. S. Kini a/w. Mr. Aum Kini i/b. Ms. Sapna Krishnappa for Respondent Nos.2 to 4.

**CORAM : A. S. CHANDURKAR &
JITENDRA JAIN, JJ.**

DATED : 18th SEPTEMBER 2024

JUDGMENT (Per Jitendra Jain, J.) :-

1. This review application is filed by Applicant/Petitioner seeking review of our order dated 15th April 2024, whereby this Court had dismissed the writ petition filed by the Applicant/Petitioner, who was denied admission to Ph.D. course conducted by Respondent Nos.2 to 4-College.

2. The learned counsel for the Review Applicant/Petitioner-Mr. Abhijeet V. Jangale submitted that in paragraph 11 of the impugned order, it is observed that even if Petitioner's score in CIS exam held is to be considered then his percentage would improve marginally from 49 to 51.6% which is less than 55% required for pursuing the Ph.D. course, and therefore, even on this count, the attempt of the Petitioner becomes infructuous. The learned counsel submitted that the Applicant/Petitioner had made an application to Respondent No.2-College under the category Nomadic Tribes (NT). He submitted that cut

off percentage for the Ph.D. course is 55% unless a candidate is from a reserve category in which case relaxation of 5% is given and since the Applicant/Petitioner falls under Other Backward Class (O.B.C.), the findings made in paragraph 11 is erroneous. The learned Counsel relied upon Circular No.152 of 2024 dated 9th July 2024 for Ph.D. course issued by Savitribai Phule Pune University and submitted that the relaxation of 5% is required to be given to the Applicant/Petitioner also. The learned counsel further submitted that as per UGC regulation, the entrance exam for Ph.D. course should consist of 60 marks, whereas Respondent No.2-College is conducting exam for only 50 marks which is contrary to the said UGC regulation and, therefore, even on this ground seeks review of the impugned order.

3. The learned counsel for the Respondent Nos.2 to 4 has vehemently opposed the review application on the ground that the Petitioner is seeking to urge new grounds which were not argued at the time of the hearing and, therefore, the review petition is required to be dismissed.

4. We have heard learned counsel for the Review Applicant/Petitioner and the Respondents and have perused the documents brought to our notice at the time of hearing.

5. At the outset, the review application is filed and argued by new counsel Mr. Abhijit Jangale, whereas main matter was argued by Mr. Mrunal Surana, Advocate for the Petitioner on 15th April 2024. In our view, the counsel who is arguing the Review Applicant/Petitioner is not the counsel who argued the main matter and, therefore, it would not be proper for the Applicant/Petitioner to engage new counsel and seek review of the order on the ground urged before us. In this connection, it is apt to refer to the decision of the Supreme Court in the case of *Tamil Nadu Electricity Board & Anr. Vs. N. Raju Reddiar & Anr.*¹, where the Supreme Court has deprecated such a practice of new counsel filing and arguing the review petition and taking new grounds which were never argued at the time of hearing of main matter. Similar view is echoed by this Court in the cases of *Bhupendra R. Gupta & Anr. Vs. Sakhubai S. Ghatal & Ors.*², *Shobha Bajirao Damodar Vs. Triratna Krida and Shikshan Prasarak Mandal, Akola & Ors.*³ and *Shree Vaishnav Alloys Pvt. Ltd., Vs. State of Maharashtra & Ors.*⁴

6. Admittedly, the arguments now canvassed before us were not the arguments made by the Applicant/Petitioner at the time of arguing the main matter, nor it is the case of the Applicant/Petitioner that it was argued and not considered. The Circular No.152 of 2024 dated 9th July

1 (1997) 9 SCC 736

2 2018 SCC OnLine Bom 9298

3 2009 (1) Mh.L.J. 979

4 R.P. No.31 of 2024 in W.P. No.16145 of 2023 dtd. 6th March 2024

2024 is the circular issued by Savitribai Phule Pune University for the academic year 2024-25 for admission to the Ph.D. program. In our view, the said Circular would not be applicable to the case of the Applicant/Petitioner since we are concerned with regulation of Respondent No.2-Deccan College which is deemed University and that too for the academic year 2022-23. Furthermore, the Circular issued by Respondent No.2 for the academic year 2022-23 very category states that relaxation of 5% is made only in case of reserve category (SC, ST, PH) candidates only. Admittedly, Applicant/Petitioner does not fall in the aforesaid reserved categories so specified in the Regulations of Respondent No.2-College. Therefore, in our view, the Applicant/Petitioner is not justified in seeking review of the impugned order.

7. Our observations in paragraph 11 that assuming Petitioner's marks are improved then also it would be less than 55% which is required for pursuing the Ph.D. course was in addition to other findings in paragraph Nos.6 to 10 and 12 and not the only findings for dismissing the petition. Therefore, even on this count, the present review petition is required to be dismissed since it is not the case of the Applicant/Petitioner that other grounds are also subject matter of present review application.

8. Insofar as the contention raised in the review petition that entrance exam is conducted contrary to UGC regulation is concerned, same is admittedly raised for the first time today and in the writ petition, there was no challenge to the entrance exam procedure being contrary to UGC regulation on the ground of the total marks for which the exam is conducted. In our view, such a new ground cannot be permitted to be raised in review application. Therefore, even on this ground, the present review application is required to be dismissed.

9. It is settled position that review application can be filed on discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the Petitioner or could not be produced by him at the time when the order was made or on account of some mistake or error apparent on the face of the record or for any sufficient cause. On a perusal of the review application, the Applicant/Petitioner has not indicated as to under which contingency, the present application for review of our order dated 15th April 2024 is made. Even otherwise, in our view, the grounds raised in the present application does not fall in any of the category for which the review is permissible. Therefore, looked from any angle, the present applicant is misconceived.

10. In view of above, the review application is dismissed.

[JITENDRA JAIN, J.]

[A. S. CHANDURKAR, J.]