

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA
AND
THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT APPEAL No.597 OF 2020, WRIT PETITION Nos.37566 AND
42680 OF 2016 AND WRIT PETITION No.28822 OF 2021

COMMON JUDGMENT: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

1. Regard being had to the similitude in the controversy involved in the present cases, the writ appeal and writ petitions were analogously heard and by this Common Judgment, they are being disposed of by this Court.
2. The writ appeal No.597 of 2020 is arising out of an order dated 22.01.2020 passed in W.P.No.23603 of 2019 by the learned Single Judge.
3. The facts of W.P.No.23603 of 2019 reveals that the appellant before this Court passed his 10th Standard Examinations in 1983 through regular school study and passed his Intermediate Examinations (Senior Secondary School) in 1986 again through regular college study. The petitioner has obtained BA (external) from the Osmania University in 1999. The Osmania University issued Notification - TS LAW CET – 2019, for the purpose of admission into Law Degree course and the petitioner applied for the same, he was given hall-ticket and the Common Entrance Test (CET) took place on 20.05.2019. The petitioner was called for verification of certificates on

10.10.2019. However, he was not allotted a seat and in those circumstances, he came up before this Court by filing a writ petition for issuance of a writ of mandamus directing the respondents therein to allot a seat in 3 year LLB course. Interim orders were passed in the matter initially and the petitioner/appellant has undergone the entire course.

4. The Bar Council of India/respondent No.4 has filed an exhaustive counter affidavit stating that the admissions into law courses are governed by the Rules framed by the Bar Council of India known as 'Rules of Legal Education, 2008 and Rule 5 of the aforesaid Rules, as amended from time to time, provides that a candidate seeking admission into LLB course must possess a bachelor's degree (regular course). Clause (vi) of Rule 2 of the Rules of Legal Education defines 'Bachelor degree in law' and clause (viii) of Rule 2 of the aforesaid Rules defines 'First Degree'. It has been further stated that BA (external) degree obtained from Osmania University is not a regular three-year course as no classes are conducted and it can, by no stretch of imagination, be treated as a regular degree as claimed by the petitioner and therefore, the question of granting admission to the petitioner into LLB course does not arise. It has been further stated, by placing reliance upon the

Rules governing the field, that a candidate seeking admission to LLB course is certainly required to possess graduate degree as a regular student and as the petitioner in the present writ petition does not possess the graduate degree, he is not entitled for admission into LLB course.

5. The respondent No.4/Bar Council of India has placed reliance on the Judgments delivered in the cases of **Vinothan Krishnan Raman v. University of Mumbai**¹, **Kalyani Mathivanan v. K.V.Jeyaraj**², **K.Sakthi Rani v. the Secretary of the Bar Council of Tamil Nadu**³, **R.Thirunavukkarasan v. State of Tamil Nadu**⁴, **Annamalai University v. Secretary to Government**⁵ and **G.S.Jagadeesh v. Chairman, Tamilnadu Dr. Ambedkar Law University, Chennai**⁶.

6. Heard the learned counsel for the parties and perused the record.

7. The basic issue involved in the present case is whether a candidate who has completed a graduate degree through correspondence/as an external candidate is entitled for admission into three-year LLB course or not?

8. The Advocates Act, 1961 was enacted to implement the recommendations of the All India Bar Committee made

¹ 2012 SCC OnLine Bom 1080

² (2015) 6 SCC 363

³ 2012 (2) LW 746 (Mad)

⁴ 2012 (5) CTC 129 (Mad)

⁵ (2009) 4 SCC 590

⁶ AIR 2018 Mad 243; 2018 SCC Online Mad 13553

in 1953, after taking into account the recommendations of the Law Commission on the subject of Reform of Judicial Administration in respect of recommendations relating to Bar and to legal education. The aim and object of enacting the Advocates Act is to establish an All India Bar Council and a common roll of advocates, to integrate the bar into a single class of legal practitioners known as advocates, to prescribe a uniform qualification for the admission of persons to be advocates, to divide advocates into senior advocates and other advocates based on merit and to create an autonomous Bar Councils, one for the whole of India and one for each State and it came into force on 19.05.1961. Sections 4 and 7 of the Advocates Act are reproduced as under:-

“4. Bar Council of India:- (1) There shall be a Bar Council for the territories to which this Act extends to be known as the Bar council of India which shall consist of the following members, namely:-

- (a) The Attorney-General of India, *ex officio*;
- (b) The Solicitor-General of India, *ex officio*;
- (c) one member elected by each State Bar Council from amongst its members.

(1A) No person shall be eligible for being elected as a member of the Bar Council of India unless he possesses the qualifications specified in the proviso to sub-section (2) of section 3.

(2) There shall be a Chairman and a Vice-Chairman of the Bar Council of India elected by the Council in such manner as may be prescribed.

(2A) A person holding office as Chairman or as Vice-Chairman of the Bar Council of India immediately before the commencement of the Advocates (Amendment) Act, 1977 (38 of 1977), shall, on such commencement, cease to hold office as Chairman or Vice-Chairman, as the case may be:

Provided that such person shall continue to carry on the duties of his office until the Chairman or the Vice-Chairman, as the case may be, of the Council, elected after the commencement of the Advocates (Amendments) Act, 1977 (38 of 1977), assumes charge of office.

(3) The term of office of a member of the Bar Council of India elected by the State Bar Council shall-

(i) in the case of a member of a State Bar Council who holds office *ex officio*, be two years from the date of his election or till he ceases to be a member of the State Bar Council, whichever is earlier; and

(ii) in any other case, be for the period for which he holds office as a member of the State Bar Council:

Provided that every such member shall continue to hold office as a member of the Bar Council of India until his successor is elected.

7. Functions of Bar Council of India:- (1) The functions of the Bar Council of India shall be-

(b) to lay down standards of professional conduct and etiquette for advocates;

(c) to lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council;

(d) to safeguard the rights, privileges and interests of advocates;

(e) to promote and support law reform;

(f) to deal with and dispose of any matter arising under this Act, which may be referred to it by a State Bar Council;

(g) to exercise general supervision and control over State Bar Councils;

(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i) to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities for cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf;

(ia) to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and papers of legal interest;

(ib) to organise legal aid to the poor in the prescribed manner;

(ic) to recognise on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as an advocate under this Act;

(j) to manage and invest the funds of the Bar Council;

(k) to provide for the election of its members;

(l) to perform all other functions conferred on it by or under this Act.

(m) to do all other things necessary for discharging the aforesaid functions;

(2) The Bar Council of India may constitute one or more funds in the prescribed manner for the purpose of –

(a) giving financial assistance to organise welfare schemes for indigent, disabled or other advocates;

(b) giving legal aid or advice in accordance with the rules made in this behalf;

(c) establishing law libraries.

(3) The Bar Council of India may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall

credited to the appropriate fund or funds constituted under that sub-section.”

9. Section 4 of the Advocates Act provides for constitution of the Bar Council of India and Section 7 of the Advocates Act deals with the functions of the Bar Council of India. The functions of Bar Council of India includes laying down the standards of professional conduct and etiquette for advocates, to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils. It also provides for grant of recognition to the Universities whose degree in law shall be a qualification for enrolment as an advocate. Besides the said functions, the Bar Council of India, in exercise of powers conferred under the Advocates Act, 1961, is empowered to frame Rules of Legal Education in consultation with Universities and State Bar Councils. Rules 5, 6 and 7 of the Rules of Legal Education, 2008, are reproduced as under:-

“5. Eligibility for admission: (a) Three Year Law Degree Course : An applicant who has graduated in any discipline of knowledge from a University established by an Act of Parliament or by a State Legislature or an equivalent national institution recognised as a Deemed to be University or foreign University recognised as equivalent to the status of an Indian University by an authority competent to declare

equivalence, may apply for a three years' degree programme in law leading to conferment of LLB Degree on successful completion of the regular program conducted by a University whose degree in law is recognised by the Bar Council of India for the purpose of enrolment.

(b) **Integrated Degree Programme:** An applicant who has successfully completed Senior Secondary School course (+2) or equivalent (such as 11+1, 'A' level in Senior School Leaving certificate course) from a recognised University of India or outside or from a Senior Secondary Board or equivalent, constituted or recognised by the Union or by a State Government or from any equivalent institution from a foreign country recognised by the Government of that country for the purpose of issue of qualifying certificate on successful completion of the course, may apply for and be admitted into the program of the Centres of Legal Education to obtain the integrated degree in law with a degree in any other subject as the first degree from the University whose such a degree in law is recognised by the Bar Council of India for the purpose of enrolment.

Provided that applicants who have obtained +2 Higher Secondary Pass Certificate or First Degree Certificate after prosecuting studies in distance or correspondence method shall also be considered as eligible for admission in the Integrated Five Years course or three years LLB course, as the case may be.

Explanation:- The applicants who have obtained 10 + 2 or graduation/post graduation through open Universities system directly without having any basic qualification for prosecuting such studies are not eligible for admission in the law courses.

6. Prohibition to register for two regular courses of study

No student shall be allowed to simultaneously register for a law degree program with any other graduate or postgraduate or certificate course run by the same or any other University or an Institute for academic or professional learning excepting in the integrated degree program of the same institution.

Provided that any short period part time certificate course on language, computer science or computer application of an Institute or any course run by a Centre for Distance Learning of a University however, shall be excepted.

7. Minimum marks in qualifying examination for admission

Bar Council of India may from time to time, stipulate the minimum percentage of marks not below 45% of the total marks in case of general category applicants and 40% of the total marks in case of SC and ST applicants, to be obtained for the qualifying examination, such as +2 Examination in case 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.

Provided that such a 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.”

10. The aforesaid Rules make it very clear that for grant of admission into three year Law Degree, a candidate is required to hold a graduation degree upon completion of

regular course conducted by University or an institution recognised as University by the University Grants Commission. Similarly for admission into integrated degree, a candidate is required to have Senior Secondary School (12th or equivalent) by attending a regular course. Much has been argued by the learned counsel for the petitioner regarding equivalence of BA (external) to that of BA (regular course) and the Certificate issued by the Osmania University dated 15.10.1999 is brought on record (page 50 of the paper book of the Writ Appeal.)

11. The certificate issued by the Osmania University reflects that University has certified that BA External Examinations conducted by the Osmania University examinations are equivalent to BA (10+2+3) pattern. Meaning thereby, the University is declaring its own degree of BA (external) is equivalent to BA (regular course). The Osmania University does not have the power to declare its degree as a recognised degree or equivalent degree. The power lies with the University Grants Commission only and no such equivalence certificate has been brought to the notice of this Court issued by the University Grants Commission, which is the apex body in the matter of grant of recognition/equivalence in respect of degrees issued by

various Universities under the University Grants Commission Act, 1956.

12. Reliance has been placed upon the letter of the University Grants Commission dated 30.06.1999. However, it was confined to only one year i.e., 1998-99 and by virtue the aforesaid letter, the petitioner does not get any right to claim the degree of BA (external) equivalent to BA (regular course). The controversy involved in the present case has been dealt with by a Full Bench of Madras High Court in **G.S.Jagadeesh**'s case (supra) and paragraphs 40, 41 and 42, which are relevant, are reproduced as under:-

“40. There is a difference between open universities and other universities and/or boards, in that some of these open universities enable candidates who do not have the basic qualifications, to obtain higher qualifications straightaway. By prosecuting studies through open universities, it may be possible for a candidate to obtain a Post Graduate Degree or a Three Year LLB Degree without being a graduate or to obtain a graduate degree without having the Senior Secondary School Certificate. In our view, the Bar Council of India, in its wisdom, framed the Legal Education Rules making a graduate degree upon prosecution of a regular course from a university, whose degree in Law is recognized by the Bar Council of India, in a mandatory eligibility criteria.

41. Had it been the intention of the Bar Council that for admission to Three Year LLB Course a candidate would be required to obtain all the previous requisite degrees and certificates, such as the Secondary School Certificate and Senior Secondary

School Certificate, by prosecuting a regular course, the Legal Education Rules would have specifically provided so.

42. The language and tenor of Rules 5(a) and 5(b) read with the first proviso and the Explanation make it amply clear that prosecution of a regular course is mandatory only for the immediately previous qualifying certificate and/or degree, for example, graduate degree for the Three Year LLB Course and Senior Secondary Certificate for the Integrated Degree Program. Had the Rules intended otherwise, the Rules would have specifically provided that candidates would not be eligible for admission to the Three Year LLB unless they had obtained the Secondary and Senior Secondary Certificates upon prosecution of studies through a regular course or through distance or correspondence mode. The Bar Council of India has, in its wisdom, chosen to frame Rules whereunder prosecution of a regular course is mandatory only in respect of the Senior Secondary Certificate for admission to the Integrated Degree Course and in respect of graduation for admission to the Three Year LLB course.”

13. The Full Bench of the Madras High Court has held that a candidate seeking admission to LLB course is certainly required to possess a graduate degree as a regular candidate and therefore, the learned Single Judge after considering all the judgments on the subject was justified in holding that the petitioner does not fulfil the requisite qualification prescribed under the Rules framed by the Bar Council of India and has dismissed the writ petition.

14. Keeping in view of the Rules of Legal Education, this Court is of the considered opinion that the petitioner has not fulfilled the eligibility criteria for admission into LLB course provided under the Legal Education Rules framed by the Bar Council of India in exercise of powers conferred by the Advocates Act, and therefore, the petitioner was not entitled for admission into three year LLB course. It has been argued before this Court that on account of interim orders in some cases, the candidates have completed the LLB course, however, it is made clear that acquiring such qualifications by virtue of the interim orders of this Court will not create a right in favour of the petitioners/appellants.

15. In the light of the aforesaid, the writ appeal and the writ petitions are dismissed. Miscellaneous petitions, if any pending, shall stand dismissed. There shall be no order as to costs.

SATISH CHANDRA SHARMA, CJ

N.TUKARAMJI, J

28.12.2021
Pln