

HIGH COURT OF GUJARAT

DHAMANI RAMESH HOLARAM

Versus

SAURASHTRA UNIVERSITY THRO REGISTRAR & 2

Date of Decision: 04 March 2015

Citation: 2015 LawSuit(Guj) 335

Hon'ble Judges: [Rajesh H Shukla](#)

Case Type: Special Civil Application

Case No: 8554 of 2013

Subject: Constitution

Acts Referred:

[Constitution Of India Art 227](#), [Art 226](#), [Art 14](#)

Advocates: [Nirav Sanghvi](#), [Pawan A Barot](#), [A R Thacker](#), [Shivang A Thacker](#), [R C Jani & Associate](#)

Cases Referred in (+): 2

Rajesh H. Shukla, J.

[1] The present petition is filed by thee petitioner under Articles 14, 226 & 227 of the Constitution of India as well as under the provisions of Saurashtra University Act and the provisions of the Advocates Act and the rules made thereunder for the prayers, inter alia, that appropriate writ, order or direction may be issued directing respondents Nos. 1-2 to enroll the petitioner in the faculty of law and permit the petitioner to pursue 3- year LL.B course for enrollment as an advocate, on the grounds stated in the memo of petition.

[2] Heard learned advocate Shri Nirav Sanghvi appearing for learned advocate Shri Pawan Barot and learned advocate Shri A.R. Thacker appearing with learned advocate Shri Shivang Thacker for respondents Nos. 1 and learned advocate Shri RC Jani for respondent No. 3.

[3] Learned advocate Shri Sanghvi referred to the papers and tried to submit that the petitioner has secured 48% marks and he pointedly referred to the affidavit filled on

behalf of the Bar Council to emphasise that there is no rule or notification denying admission to a student who has passed the graduation course with more trials. He submitted that if the petitioner has secured the minimum required percentage of marks irrespective of the trials or attempts he should not be denied admission as the requirement is fulfilled. He submitted that the petitioner has appeared in the exam and had got exemption in a few subjects and thereafter again he appeared and ultimately cleared the 3rd year B.Com. course and he cannot be denied admission for the 3-year law degree course. He has also tried to submit that the petitioner is possessed of the qualification for doing 3-years law degree course and therefore the impugned decision is erroneous.

[4] Learned advocate Shri Thacker for respondent No. 1 University referred to the affidavit-in-reply and submitted that as stated in detail in the affidavit-in-reply Ordinance 154 of the Saurashtra University Ordinance clinches the issue. He pointedly referred to O. 154 which has been reproduced in the affidavit. Learned advocate Shri Thacker submitted that as stated in this Ordinance 154, the petitioner having passed the exam with pass class would be considered as a pass class and he cannot claim that he has passed the exam with 48.42% marks. He submitted that the University as well as the Bar Council of India has taken a consistent stand that as the petitioner has not secured 45% marks in the 3rd year B.Com. Examination he cannot claim admission in such professional course like LL.B. Learned advocate Shri Thacker has also referred to the affidavit-in-reply and submitted that as contended if a candidate who passes the examination in more than one trial, then he cannot be considered with reference to the marks secured at each attempt. He has also submitted that in similar circumstances the court had declined to interfere in Special Civil Application No. 17933 of 2014 which came to be dismissed on 9.1.2015. He also referred to the order passed in Letters Patent Appeal No. 51 of 2015 dated 22.1.2015 and submitted that the said order has been confirmed and therefore as it was also with regard to minimum qualification for LL.M. course, the same analogy may be applied.

[5] In rejoinder, learned advocate Shri Sanghvi referred to the rules of the Bar Council prescribing the minimum marks in qualifying examination for admission to the law degree course. He pointedly referred to Rule 7 to emphasise about the 45% of the total marks and submitted that all that is provided is 45% marks has to be obtained. He strenuously submitted that it does not provide that it has to be in one attempt or it does not prohibit the admission if the marks as required are not secured in the same attempt. He therefore submitted that if the person has passed in more than one attempt with exemption in few subjects but ultimately having passed, the average has to be considered and the petitioner having secured 48% marks would be eligible.

[6] In view of these rival submissions, it is required to be considered whether the present petition can be entertained.

[7] The background of facts as stated in detail and referred to makes it clear that the petitioner has passed the 3rd year B.Com. Examination in four trials. He got exemptions in a few subjects. However, when he tried to secure admission to the LL.B. Course the percentage of marks were insisted upon that he must have the minimum qualifying marks, i.e. 45%. Therefore, the real issue is with regard to the rules of the Bar Council of Gujarat which has been referred to by learned advocate Shri Sanghvi and learned advocate Shri Jani. Learned advocate Shri Jani referred to a communication dated 23.8.2002 which has a reference to this very issue and submitted that the Enrollment Committee has passed a Resolution dated 31.7.2002 which is clear. He pointedly referred to the same resolution. It provides,

"In case of those students, who have obtained their graduation degree in more than one trial, in such cases percentage of marks may be calculated by totaling the marks obtained in each paper at the time of clearing the subject."

[8] Therefore, this Resolution clearly provides for the situation where a student who has obtained the graduation degree in more than one trial, then, in that case, the percentage of marks may be calculated by totaling the marks obtained in each paper at the time of clearing the subject. However, Rule 7 of the Bar Council may not have specifically provided.

In any view of the matter, for the purpose of admission O. 154 of the University would be relevant which has also been quoted in the affidavit-in-reply filed on behalf of respondent No.1 University. It has been clearly contended that if the person has passed the examination in more than one trial he would have the benefit of exemptions in few papers but he would be considered as having passed the examination with minimum percentage of marks. Ordinance 154 refers to the exemptions and it clearly mentions that the person would be entitled to exemption at the other exams from the other subjects. However, the standard attained at the original examination is not lower than that required at the other examination. It clearly provides,

"A candidate who has passed the examination after obtaining the benefit of condonation shall be deemed to have passed in individual subjects of the examination with the minimum percentage of marks required for passing such subjects."

[9] Therefore, in light of these clear provisions of the Ordinance which hardly requires any further elaboration, the case of the petitioner cannot be considered. It is required

to be mentioned that the Hon'ble Apex Court in a judgment in the case of [Prayadarshini College of Computer Science & anr. v. Manish Kumar & ors.](#), 2013 11 SCC 802 has observed,

"15. It has to be kept in mind that every candidate applying for a particular course in any college is expected to go through the advertisement thoroughly including the eligibility criteria prescribed for each course and after fulfillment of the required conditions, state the correct particulars in the application form failing which he/she cannot claim any benefit for his/her own wrong."

[10] The Hon'ble Apex Court in a judgment in the case of [Regional Officer, CBSE v. Ku. Sheena Peethambaran & ors.](#), 2003 7 SCC 719 has observed and quoted from the earlier judgment,

"We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws."

[11] Thus, while considering the aspect of eligibility with minute details it is better to be left to the authority like the University as an expert body and the court would decline to interfere, in exercise of its discretionary jurisdiction under Art. 226. Again, LL.B. is a professional course and in order to have certain minimum standards if the body like the University or the Bar Council have fixed certain minimum standards, the same cannot be relaxed by such interpretation so that a person who is not otherwise qualified is permitted to join the course. Thus, when the Ordinance of the University prescribes the eligibility, it cannot be overlooked and the present petition cannot be entertained.

[12] In the circumstances, the present petition deserves to be dismissed and accordingly stands dismissed. Rule is discharged. No order as to costs.