

(2011) 09 MAD CK 0360

In the Madras High Court

Case No : Writ Petition No. 18881 of 2011 and M.P. No. 1 of 2011

S. Tharani Kirthika rep. by her father and natural guardian R. Subramaniam APPELLANT

Vs

The Registrar, Tamil Nadu Dr. Ambedkar Law University RESPONDENT

Date of Decision : 07-09-2011

Acts Referred:

Advocates Act, 1961 — Section 24(1), 49(1), 7, 7(1)

Citation : (2011) 09 MAD CK 0360

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G. Jehanathan, for the Appellant; S.Y. Masood, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—By consent of both sides, the writ petition is taken up for final disposal.

2. The Petitioner, who has passed Plus Two (+2) examinations, not in regular stream, has filed this writ petition praying for a writ of mandamus directing the Respondent Law University to admit her in the first year of five year integrated B.L. Degree course in Dr. Ambedkar Law College, Chennai for the academic year 2011-2012.

3. It is the case of the Petitioner that she belongs to M.B.C. community, passed 10th standard examinations held in March, 2009, and appeared for 12th Standard examinations as a private candidate in March, 2011. The Petitioner applied for admission to five year Integrated B.L. Degree course offered by Dr. Ambedkar Law University, Chennai-28. According to the Petitioner, she having passed 12th standard in one attempt, she is entitled to be admitted in the first year of the five year integrated law course and she applied for the same. The Petitioner was called upon to attend the counselling on 9.7.2011 at 9.00 a.m. and she attended the counselling, however the Respondent University refused to

issue any selection/admission letter to the Petitioner on the ground that she passed Plus Two examinations as a private candidate and not underwent the 10+2 regular course, which is fixed as the eligibility for admission in the five year integrated law course. The Petitioner sought for clarification from the Respondent and the officials of the Respondent informed that the University is awaiting clarification from the Bar Council of India as to whether higher secondary student, who passed not under the regular stream, is eligible to be admitted or not. The Petitioner having waited for some time, approached this Court with the above said prayer.

4. When the writ petition was posted for admission on 12.8.2011, the learned Counsel for the Petitioner was permitted to service notice to the standing Counsel for the Respondent University, who on instructions opposed the prayer in the writ petition.

5. It is the contention of the learned Counsel appearing for the Petitioner that she having passed Plus Two with 69% of marks, is eligible to be admitted as the minimum prescribed marks for admission is only 45% of marks in Plus Two examinations and there is no prohibition to admit candidates passed under private study to seek admission and therefore the action of the Respondent in not issuing admission card to the Petitioner for joining in the Dr. Ambedkar Law College, Chennai, in spite of availability of vacancies is unsustainable and illegal.

6. The learned standing Counsel for the Respondent University on the other hand submitted that the University is strictly adhering to the rules and Regulations prescribed by the Bar Council of India from time to time and the Bar Council of India in Rules, para 4, Chapter 2(5) prescribed eligibility for admission to Law courses, wherein it is stated 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 to the five year Integrated BL degree course or three year course as the case may be. According to the learned Counsel for the Respondent, the Petitioner having studied Plus Two in private mode, is not eligible to be admitted and the Bar Council of India was addressed in this regard and no clarification is received so far. The learned Counsel also submitted that in private study, there is no continuous assessment of students; no interaction between teacher and student; no class assignment; no assessment; and no tests are conducted and therefore the students may not be equipped on par with the regular stream students. Therefore the University resolved that private students are not eligible to take law course. In correspondence and distance education mode, the students are attending contact programmes, seminars, assessment of assignments, etc., and in private study, students are not put to any such training. Therefore the Petitioner who has passed Plus Two as private candidate, was found not eligible. The learned Counsel also relied on the Legal Education Rules, 2008, issued by the Bar Council of India, where eligibility for admission is prescribed and in the explanation to proviso it is clearly stated that the

applicants, who obtained 10+2/graduation/post graduation directly without having any basic qualification for prosecuting such studies are not eligible for admission in the law course and as per explanation the Petitioner having not undergone the 11th and 12th standard classes, is to be treated as not having qualification for writing Plus Two examination and therefore the action of the Respondent in not giving admission to the Petitioner is legal.

7. I have considered the rival submissions of the learned Counsel for the Petitioner as well as Respondent.

8. The point for consideration is whether the Petitioner, who passed Plus Two as a private candidate, not undergoing 11th and 12th standards through regular stream, is eligible to be admitted in the five year Integrated B.L. degree course in a Government Law College.

9. The Legal Education Rules, 2008 was issued by the Bar Council of India in exercise of powers conferred u/s 7(1)(h) and (i), 24(1)(c)(iii) and (iii a), 49(1) (af)(ag) and (d) of Advocates Act, 1961. u/s 7 of the Advocates Act, 1961, the Bar Council of India is vested with the general supervision and control over the State Bar Councils to promote legal education and to lay down standards for legal education.

10. The Division Bench of this Court in the decision reported in (2010) 4 MLJ 849 : 2010 (2) L.W. 746 (K. Sakthi Rani v. Secretary, Bar Council of Tamil Nadu) considered the very same issue and in paragraph 28 it is specifically held that the Bar Council of India has got ample power and authority to regulate and control the legal education, particularly with reference to entry of students into the Law course. It is the duty of the Bar Council of India to see that the standard of legal education is maintained, sustained and improved.

11. The Division Bench of this Court in the decision reported in (1981) 2 MLJ 141 (Meenakshi Sundaram, President, National Union of Journalist, Madras v. The Director of Legal Studies, Madras Law College, Madras and Ors.) upheld the decision of the Bar Council of India that B.G.L. Correspondence degree of the Madras University would not be considered for admission to B.L. Degree course. In the said decision it is held that the degree obtained after pursuing the correspondence course, cannot be equated in all circumstances and in all respects with a degree obtained after attending regular classes. The Division Bench in the said judgment held that Section 7(1)(h) of the Advocates Act, 1961 is capable of taking over the ingredient, which will go to constitute the end or ultimate level of education that is expected of a candidate seeking enrollment. The Bar Council of India is therefore vested with ample power to regulate and control the mode and method by which the legal education should be imparted and improved.

12. In the decision reported in Bar Council of India Vs. Board of Mang. Dayanand Coll. of law and Others, the Honourable Supreme Court held that the Universities and the State Governments concerned will have to act in accordance with the

requirement set down by the Bar Council of India and the Bar Council of India retains adequate power to control the Course of Studies in Law, the power of inspection, the power of recognition of degrees, and the power to deny enrollment to Law Degree Course. The Legal Education Rules, 2008 having been framed and implemented by exercising the power under the Advocates Act, 1961, the standard prescribed by the Bar Council of India cannot be questioned by the Petitioner.

13. In this case, the Petitioner has not pursued her education upto 12th standard in regular stream and the higher secondary course certificate was obtained as a private candidate without attending regular classes in standards 11 and 12. Hence the first Respondent is justified in not admitting the Petitioner for five year Integrated B.L. degree course.

14. Whether a candidate obtained degree like B.A., B. Sc., B. Com, without successfully completing 12th standard school education can be promoted to higher post on the basis of the graduation degree, was considered by the First Bench of this Court in the decision reported in T.L. Muthukumar and Others Vs. Registrar General, High Court and Another, wherein it is held that the Government order issued in G.O. Ms. No. 107 P&AR Department dated 18.8.2009 stating that the degrees obtained without basic qualification, cannot be treated as valid degree for claiming promotion. The said Government order was issued based on the judgment of the Supreme Court reported in Annamalai University rep. by Registrar Vs. Secy. to Govt. Infn. and Toursm Dept. and Others, . Thus, it is settled principle of law that the appointing authority or the authority competent to prescribe qualification for admission is empowered to declare what are all the qualifications, which can be treated as valid qualifications. The stand taken by the Respondent University is towards promotion of excellence of education in the field of law education and no fault can be found in the said decision.

15. The State Government or University can prescribe higher norms for admission for promoting the excellence of education. A similar issue regarding fixing higher marks for admission to Engineering courses was considered by the Supreme Court in the decision reported in Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others, and in paragraphs 13 and 17 (in SCC) it is held thus,

13. The object of the State or University fixing eligibility criteria higher than those fixed by AICTE, is twofold. The first and foremost is to maintain excellence in higher education and ensure that there is no deterioration in the quality of candidates participating in professional engineering courses. The second is to enable the State to shortlist the applicants for admission in an effective manner, when there are more applicants than available seats. Once the power of the State and the examining body, to fix higher qualifications is recognised, the rules and Regulations made by them prescribing qualifications higher than the minimum suggested by AICTE, will be binding and will be applicable in the

respective State, unless AICTE itself subsequently modifies its norms by increasing the eligibility criteria beyond those fixed by the University and the State.

17. ...the State/University, may, in spite of vacancies, continue with the higher eligibility criteria to maintain better standards of higher education in the State or in the colleges affiliated to the University. Determination of such standards, being part of the academic policy of the University, are beyond the purview of judicial review, unless it is established that such standards are arbitrary or "adversely affect" the standards, if any, fixed by the central body under a Central enactment.

16. Applying the principles laid down in the above cited decisions to the facts of this case, this Court holds that the Petitioner has not made out any case to issue a writ of mandamus. Consequently the writ petition is dismissed. No costs. Connected miscellaneous petition is also dismissed.